DOCUMENT RESUME

ED 351 405 UD 028 908

TITLE	Civil Rights, Diversity, and Accreditation. Hearing before the Human Resources and Intergovernmental Relations Subcommittee of the Committee on Government Operations, House of Representatives, One Hundred Second Congress, First Session (June 26, 1991).
INSTITUTION	Congress of the U. S., Washington, D. C. House Committee on Government Operations.
REPORT NO	ISBN-0-16-038340-4
PUB DATE	92
NOTE	64p.
AVAILABLE FROM	U.S. Government Printing Office, Superintendent of Documents, Congressional Sales Office, Washington, DC 20402.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	*Accreditation (Institutions); Accrediting Agencies; Advisory Committees; Affirmative Action; *Agency Role; Civil Rights; Educational Policy; *Ethnic Distribution; Federal Aid; Federal Regulation; Government Role; Government School Relationship; Higher Education; *Racial Balance; *Sex Fairness; Standards
IDENTIFIERS	*Diversity (Institutional); *Middle States Association of Colleges and Schools

ABSTRACT

A congressional hearing was held concerning the Department of Education's failure to grant recognition to the Middle States Association of Colleges and Schools, a higher education accrediting agency, because of that agency's approach to promoting diversity on college campuses. Following opening statements by the committee members, the hearing's only witness, Secretary of Education Lamar Alexander, testified. He began by noting that the review of Middle States was in process and by addressing the question of using diversity as a criterion for accrediting colleges and universities. He addressed the nature of the original charge to accreditation agencies, which was to assure academic quality standards, and not to check on the racial, ethnic, or gender mix of an institution. Secretary Alexander questioned the appropriateness of Middle States enforcing diversity standards. He also noted the power of these agencies as accreditation is linked to student and institutional federal funding. Following his statement, committee members questioned the secretary on particulars of the Middle States review. Included in the publication are the prepared statements of those present at the hearing as well as others not present, and documentation related to the issues of the hearing, including decisions, newspaper clippings, and correspondence. (JB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

UD

CIVIL RIGHTS, DIVERSITY, AND ACCREDITATION

ED351405

HEARING

BEFORE THE

HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

JUNE 26, 1991

Printed for the use of the Committee on Government Operations

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

U.S. GOVERNMENT PRINTING OFFICE

53-841 cc WASHINGTON : 1992

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-038340-4

BEST COPY AVAILABLE

UD028 80f

COMMITTEE ON GOVERNMENT OPERATIONS

JOHN CONYERS, JR., Michigan, *Chairman*

CARDISS COLLINS, Illinois
GLENN ENGLISH, Oklahoma
HENRY A. WAXMAN, California
TED WEISS, New York
MIKE SYNAR, Oklahoma
STEPHEN L. NEAL, North Carolina
DOUG BARNARD, JR., Georgia
TOM LANTOS, California
ROBERT E. WISE, JR., West Virginia
BARBARA BOXER, California
MAJOR R. OWENS, New York
EDOLPHUS TOWNS, New York
BEN ERDREICH, Alabama
GERALD D. KLECZKA, Wisconsin
ALBERT G. BUSTAMANTE, Texas
MATTHEW G. MARTINEZ, California
DONALD M. PAYNE, New Jersey
GARY A. CONDIT, California
PATSY T. MINK, Hawaii
RAY THORNTON, Arkansas
COLLIN C. PETERSON, Minnesota
ROSA L. DeLAURO, Connecticut
CHARLES J. LUKEN, Ohio
JOHN W. COX, JR., Illinois

FRANK HORTON, New York
WILLIAM F. CLINGER, JR., Pennsylvania
AL McCANDLESS, California
J. DENNIS HASTERT, Illinois
JON L. KYL, Arizona
CHRISTOPHER SHAYS, Connecticut
STEVEN SCHIFF, New Mexico
C. CHRISTOPHER COX, California
CRAIG THOMAS, Wyoming
ILEANA ROS-LEHTINEN, Florida
RONALD K. MACHTLEY, Rhode Island
DICK ZIMMER, New Jersey
WILLIAM H. ZELIFF, JR., New Hampshire
DAVID L. HOBSON, Ohio
SCOTT L. KLUG, Wisconsin

BERNARD SANDERS, Vermont
(Independent)

JULIAN EPSTEIN, *Staff Director*
DONALD W. UPSON, *Minority Staff Director*

HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE

TED WEISS, New York, *Chairman*

HENRY A. WAXMAN, California
DONALD M. PAYNE, New Jersey
PATSY T. MINK, Hawaii
ROSA L. DeLAURO, Connecticut

CRAIG THOMAS, Wyoming
WILLIAM H. ZELIFF, JR., New Hampshire
DAVID L. HOBSON, Ohio

BERNARD SANDERS, Vermont (Ind.)

EX OFFICIO

JOHN CONYERS, JR., Michigan

FRANK HORTON, New York

JAMES R. GOTTLIEB, *Staff Director*
MARC SMOLONSKY, *Professional Staff Member*
NANCY PRATHER, *Clerk*
STEPHEN McMILLAN, *Minority Professional Staff*

CONTENTS

Page

Hearing held on June 26, 1991 1

Statement of:

Alexander, Lamar, Secretary, Department of Education, accompanied by Ted Sanders, Ph.D., Under Secretary; Michael Williams, Assistant Secretary for Civil Rights; John Childers, Deputy Assistant Secretary for Higher Education Programs; and Steve Winnick, acting general counsel 12

Weiss, Hon. Ted, a Representative in Congress from the State of New York, and chairman, Human Resources and Intergovernmental Relations Subcommittee: Opening statement 1

Letters, statements, etc., submitted for the record by:

Alexander, Lamar, Secretary, Department of Education: Prepared statement 17

DeLauro, Hon. Rosa L., a Representative in Congress from the State of Connecticut: Prepared statement 27

Weiss, Hon. Ted, a Representative in Congress from the State of New York, and chairman, Human Resources and Intergovernmental Relations Subcommittee: Letter dated April 11, 1991, from Lamar Alexander, U.S. Department of Education to Dr. Howard L. Simmons, executive director, Middle States Association of Colleges and Schools, regarding petition for renewal of recognition 33

Zeliff, Hon. William H., Jr., a Representative in Congress from the State of New Hampshire: Prepared statement 5

CIVIL RIGHTS, DIVERSITY, AND ACCREDITATION

WEDNESDAY, JUNE 26, 1991

HOUSE OF REPRESENTATIVES,
HUMAN RESOURCES AND
INTERGOVERNMENTAL RELATIONS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Ted Weiss (chairman of the subcommittee) presiding.

Present: Representatives Ted Weiss, Donald M. Payne, Rosa L. DeLauro, Craig Thomas, William H. Zeliff, Jr., and David L. Hobson.

Also present: Representative John Conyers, Jr.

Staff present: James R. Gottlieb, staff director; Marc Smolonsky, professional staff member; Nancy Prather, clerk; and Stephen McMillan, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN WEISS

Mr. WEISS. The Subcommittee on Human Resources and Intergovernmental Relations is now in session.

I am delighted to welcome as our first witness, together with his staff, the Secretary of Education, the Honorable Lamar Alexander, and to say how pleased I am to have him with us and to indicate that we had served together on the Advisory Commission on Intergovernmental Relations. I enjoyed that experience.

He comes to us with a distinguished background as Governor of his home State and as one who has been especially interested in the area of education. He has a reputation deserved for having a commitment to education.

It is within that context that I find the subject of today's hearing to be somewhat perplexing. I am going to make a brief opening statement, then yield to my distinguished colleagues for whatever statements they may have to make.

On April 11, the Secretary of Education withheld recognition of a prominent accrediting agency specifically because he opposes the agency's standard to promote cultural, ethnic, and gender diversity in colleges and universities.

Diversity in education is one of our most important tools to eliminate the vestiges of the Nation's tragic history of discrimination. It ensures that U.S. students are exposed to a variety of expe-

riences that will provide the kind of open education people living in a free society deserve.

Diversity has been embraced by educators, accrediting agencies, the Federal Government, and the courts. Most of the accrediting agencies use diversity as one standard of judging educational effectiveness.

The Department of Education's civil rights regulations encourage the use of diversity to achieve affirmative action. The Supreme Court has approved diversity as a constitutionally permissible goal of all colleges and universities.

Only last year, the Department of Education invoked President Bush's name in announcing an initiative to promote diversity in education. But now the Department seeks to eliminate diversity standards from accrediting agencies.

The Secretary has invoked the ugly buzz word of the Bush administration, "Quotas." Diversity suddenly means "quotas."

Equating diversity standards with quotas is an unfortunate scare tactic. The Department of Education seems to have become the bully pulpit for the White House's attack on civil rights.

Earlier the Department attempted to outlaw scholarships that gave preference to minorities. Now the Department has taken its assault on civil rights a step further with its attempt to ban diversity standards.

I hope today's hearing sends a strong message to the Department of Education. America wants to correct its history of discrimination, not return to it.

Today we will hear from the Secretary of Education, Lamar Alexander, who is accompanied by several of the Department's management team.

Before I have him begin his testimony, let me recognize our distinguished ranking minority member, Mr. Craig Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

Welcome, Mr. Secretary.

I want to open by thanking you, Mr. Chairman, for having these hearings. This is a serious issue that warrants our consideration.

This subcommittee dealt with a similar issue 3 months ago when the Director of the Office of Civil Rights, Michael Williams, was called before us to discuss the Department's policy regarding "race-based" scholarships.

At that time, the Secretary reiterated the strong support of the administration for programs that stopped discriminatory practices and equal access to educational opportunities for everyone.

The question before us today is whether an unelected, quasi-Federal agency can implement a new policy on its own without going through a formal regulatory process or public review, and whether the Secretary, who has the actual authority to oversee and enforce the laws, has the right to intervene.

The Middle States Association of Colleges and Schools/Commission on Higher Education is responsible for accrediting colleges and universities along the mid-Atlantic coast. Like similar associations around the country, Middle States is directed by Federal regulation to judge a school based upon factors such as the quality of its programs and faculty, the size of its library, its financial resources.

Accreditation, or the lack of accreditation, can be worth millions of dollars to a school.

Middle States decided that "a diversity standard" would now be used as a deciding factor in granting accreditation to a school. Unfortunately, they never bothered to tell the Department of Education, the general public, the Council on Postsecondary Accreditation, or the schools themselves of this policy or the criteria to be used. For this reason, Secretary Alexander has stepped in and withheld accreditation of Middle States until they can document their policies and criteria.

Let me move away from that a second to say a quote here, "The Secretary of Education has raised a pointed question about the way the Middle States Association of Colleges and Universities is using the definition of diversity as a standard for accreditation. He asks whether an accrediting agency has any business telling clients how they should balance their student bodies and faculty by race, ethnicity, gender, or age."

The answer to that is "no." That is an editorial in the Washington Post.

The issue in this case is not whether there is a lack of commitment on the part of President Bush or Secretary Alexander to ensure equal educational opportunities for everyone—that commitment has been clearly stated on many occasions.

The issue is whether the Secretary of Education has the right and the responsibility to ensure fairness in the accreditation process and accountability on the part of the reviewers.

Once again, Mr. Chairman, thank you for holding this hearing.

I look forward to the testimony from Secretary Alexander, and thank him for taking the time to come before us today.

Mr. WEISS. Thank you, Mr. Thomas.

Let me call on our distinguished Member from New Hampshire, Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. Chairman.

Thank you, Mr. Secretary.

Mr. Chairman, today's hearing is a very serious matter. It certainly deserves our full input and consideration.

One out of every two college students receives some kind of Federal grant or loan. Thus, organizations who accredit our colleges and universities determine the school's ability to qualify for participation in these Federal funding programs for the students.

Regional accrediting associations are very powerful. They can make or break a school or institution.

Regional accrediting associations are not elected officials. Yet, they set important policy standards that have a direct impact upon Federal funding and upon a school's ability to continue in existence.

Today we examine one of these policy standards. Should an accrediting institution dictate to colleges and other post-graduate education institutions whether or not and how that school should balance their students, faculty, administration, and governing boards by race, ethnicity, sex, or age.

As Jeanne Kirpatrick has said, democratic societies require public institutions that are inclusive and responsive to all groups

and sensibilities. Sexual or racial discrimination by any name is unacceptable in such a society.

So are quotas. So is imposing standards of conformity in educational institutions.

Using power to impose politically correct policy is especially compatible with the requirements of a free society or democratic pluralism. Democratic pluralism does not mean cultivating identical diversities in all educational institutions.

In New England where we have so many diverse colleges and universities, I shudder to think of an accrediting board that might think Boston College has too many Irish, Vassar has too many women, Brandeis University has too many Jewish students. Mr. Chairman, I think Secretary Alexander is of to a fine start in addressing this serious problem. His work has been praised in some of our Nation's leading publications.

I would like to submit for the record articles on this subject from the New York Times, Washington Post, the Washington Journal, and the Jeanne Kirpatrick article I have been quoting from.

Thank you.

[The prepared statement of Mr. Zeliff follows:]

Opening Statement of Congressman Bill Zeliff

MR. CHAIRMAN, Todays hearing is a serious matter, that deserves our full consideration. One out of every two college students receive some kind of federal grant or loan. Thus those organizations who accredit our colleges and institutions determine, in fact, the schools ability to qualify for participation in these federal funding programs for their students.

These regional accrediting associations are very powerful. They can make or break a school or institution. Regional accrediting associations are not elected officials. They are not appointed by elected officials. Yet they set important policy standards that have a direct impact upon federal funding, and even upon a school's ability to continue in existence.

Today, we examine one of those policy standards--Should an accrediting institution dictate to colleges and other post graduate educational institutions, whether or not, and how that school should balance their students, faculty, administration and governing boards by race, ethnicity, sex or age?

As Jeane Kirkpatrick has said," Democratic societies require public institutions that are inclusive and responsive to all groups and sensibilities. Sexual or racial discrimination by any name is unacceptable in such a society. But so are quotas. And so is imposing standards of conformity on educational institutions. Using power to impose politically correct policies is especially incompatible with the requirements of a free society or of democratic pluralism. Democratic pluralism does not mean cultivating identical diversities within all educational institutions."

In New England where we have so many diverse colleges and universities, I shudder to think of an accrediting board that might decide that Boston College has too many Irish, that Vassar has too many women, that Norwich Military School has too many men, that Brandeis has too many Jewish students, or that Saint Anselms has too many catholics.

Mr Chairman, I think that Secretary Alexander is of to a fine start in addressing this serious problem. His work has already been praised in some of our nation's leading publications. I would like to submit for the record articles on this subject from the New York Times, the

Washington Post, the Wall Street Journal, and the Jeane Kirkpatrick article that I have been quoting from. Thank you Mr. Chairman.

THE NEW YORK TIMES EDITORIALS/LETTERS SUNDAY, APRIL 21, 1991

The Tortuous Issue of Diversity

Lamar Alexander, the Secretary of Education, has challenged a regional accrediting association to justify its use of cultural diversity as one standard in evaluating colleges and universities. His challenge imposes two burdens. One is on the accrediting body, the Middle States Association of Colleges and Schools, to insure that this new standard is an appropriate criterion for accreditation and will not require schools to achieve arbitrary numerical racial, ethnic or sexual balance. Another burden is on Mr. Alexander to insure that his own review of the accreditors is based on a concern for academic quality, not politics.

Colleges and universities are periodically revaluated by regional accrediting associations that are recognized by the Federal Department of Education. The associations are themselves reviewed and given a new franchise to operate by the department at five-year intervals. Students attending a college that is not accredited are not eligible for Federal financial aid.

To win re-accreditation, a school must pass muster in a number of areas like financial integrity and fulfillment of its educational mission. In 1988, the Middle States Association, which covers 500 schools in the mid-Atlantic region, Puerto Rico and the U.S. Virgin Islands, voted to add cultural diversity to the standards it applies.

That includes looking at whether an institution has made good-faith efforts to recruit minorities and women and to offer courses that include the roles women and minorities have played in history.

Last year, Middle States deferred the re-accreditation of Bernard Baruch College, part of the City University of New York. The association raised questions about the number of minority faculty and administrators and a high dropout rate among minority students. In a separate action, Middle States questioned the failure of Westminster Theological Seminary in Philadelphia to include a woman on its governing board.

Both schools have since been re-accredited. But should diversity be a factor in the accreditation process? That's what Mr. Alexander now wonders. He is supporting his department's decision to defer reauthorization of Middle States until the association demonstrates that its diversity standard is understood by colleges, satisfies educators and is applied evenhandedly.

While recognizing the importance of diversity, Mr. Alexander is concerned that accrediting associations might try to impose mandates on colleges that compromise academic freedom or pre-empt the Justice Department's historic responsibility to monitor and enforce the civil rights laws.

Diversity is an inescapable issue. But it is not a simple one. That's why it's appropriate for Mr. Alexander to insure that any such standard is not unfairly wielded like a club to micromanage individual colleges and universities. As a leading spokesman for an Administration that has shown little leadership or sensitivity on civil rights, it's also up to Mr. Alexander to demonstrate that he's not simply trying to bury the issue.

A18 SATURDAY, APRIL 27, 1991

The Washington Post

Diversity Goes to College

DIVERSITY HAS become a suspect term in American education. It remains a central principle of the country's life and has a wholly legitimate significance in running universities. At one level it refers to a university's obligations under the civil rights laws not to discriminate. But the word has also been put to a variety of other uses. It has become a code word hinting at ethnic or casuist politics disguised as education and quota-ridden hiring and promotion. The celebration of American diversity is a good idea, but in the hands of zealots it turns easily into propaganda and the practice of ideological patronage—which is a very bad idea, and many universities can offer horror stories.

Lamar Alexander, the new secretary of education, has raised a pointed question about the way that the Middle States Association of Colleges and Universities is using its definition of diversity as a standard for accreditation. He asks whether an accrediting agency has any business telling colleges how they should balance their student bodies and faculties "by race, ethnicity, gender or age." The answer to that one is clear: no.

Although the accrediting agency is a voluntary association, its rules have the force of legislation for its members. Accreditation is literally vital to any college. Without it, a college's students are ineligible for federally guaranteed loans.

The accrediting agencies never really sought their role as gatekeepers for federal money. Their job is chiefly to police educational standards. But Congress didn't (and, emphatically, still doesn't) want the federal government to get into accreditation and deciding what should be taught how. After the Korean War it turned to associations such as Middle States to determine where veterans could study under the GI Bill. Middle States, like the other agencies, is a high-minded, well-intentioned academic organization that mostly concerns itself with such things as the proper content of a three-credit course in biology. But it has also been making rules in the name of diversity about who should be on a college's board, for example, and how many of the trustees should be women.

It's quite true that a college's ethnic and gender balance are related directly to its educational values. But those are decisions for each college to make for itself as it defines its own mission. There are certain basic rules of fairness on which American society insists, and they have been written into law—with deep consideration and endless debate—by Congress and the courts. Beyond that, it's up to each college to carry out its responsibilities as it thinks best. Unlike the three-credit biology course, ethnic policy is not a matter to which an accrediting agency brings any special expertise. Uniform rules of social policy, as Secretary Alexander observes, quickly become a threat to diversity among colleges and universities—a rich and creative diversity that is worth preserving.

THE WALL STREET JOURNAL TUESDAY, APRIL 30, 1991

REVIEW & OUTLOOK

The Accreditation Wars

The education initiative unveiled last week by President Bush was in fact the second important decision to come from the administration's new Secretary of Education, Lamar Alexander. His first, days earlier, was to decline, for the present, to reauthorize the Middle States Association of Colleges and Schools—one of the six regional agencies that accredit colleges and universities. Specifically, Mr. Alexander wants time to review some of the standards Middle States has taken to using in evaluating schools—standards he clearly finds disturbing, for good reason.

The most widely known—and pettiest—of the accrediting agencies, Middle States made news last spring when its examiners deferred accreditation of New York's Baruch College, generally acknowledged to be among the nation's finest business colleges. The Middle States examiners had no complaints about Baruch's academic standards, which were, they conceded, excellent.

The examiners charged instead that Baruch was deficient in social concerns, minority hiring and had in general failed to show proper obeisance to the goal of "multiculturalism." In short, an agency that is supposed to judge schools only on academic standards, resources, library facilities and the like had now decided it was really in the business of dictating social agendas, hiring and promotion practices, and generally ensuring conformity to social-justice criteria as set forth by the disciples of "multiculturalism" and "diversity."

Baruch was not alone. Middle States has also trained its sights on Westminster Theological Seminary in Philadelphia and found it wanting. It threatened to remove Westminster's accreditation if it did not include a woman on its governing board. Such a threat, Secretary Alexander properly notes, "raises serious questions regarding religious as well as academic freedom."

Serious indeed. A college's accreditation is its lifeblood, proof of its legitimate status as an educational institution. No federal money, furthermore, can go to any college or university that is not accredited. Not for [illegible] by the prospect of an agency like Middle States coming in and deciding that the school in question has a gender or racial balance that doesn't suit the evaluators, or that its curriculum is too "Eurocentric." They saw what happened to Baruch. The college has since had its accreditation restored but the damage to its reputation—it blisted when a band of ideologues in the guise of an evaluating team descended—will linger on.

In the years since the 1950s—so confidently described now as "the age of conformity," usually by people who weren't around at the time—we have heard much about Senator McCarthy and blacklisting. This period is now presented as the dark history of an age happily past, when terrors and indecencies are today the stuff of movies (such as Robert De Niro's latest) and books. The truth is that we are far worse off now as regards the threat to intellectual freedom, the pressures to conform ideologically, than during the McCarthy era.

In the '50s, at least, the colleges and universities were bastions of activism in the struggle to defend intellectual freedom. Today the most serious assault on that freedom comes from within the universities themselves. In the '50s, Senator McCarthy could not come into a university or college and threaten a cutoff of federal funds if the school failed to toe an ideological line or hire and promote faculty in obedience to certain political dictates. Middle States, in the '90s, was able to do just that.

Following the Education Secretary's announcement that he would defer the agency's reauthorization, there was the predictable hue and cry from the usual quarters characterizing the decision as another signal of the administration's intention to roll back civil rights. The multiculturalist establishment and Middle States' spokesmen further contend that the so-called "cultural diversity" measure that Middle States has been using is now a commonly accepted standard. This will certainly come as a surprise to observers. Including Middle States' insurance company, which has just decided the controversy over this issue is so great that it will not renew Middle States' coverage for legal disputes involving the diversity standard.

In his statement on the matter of Middle States' renewal, Secretary Alexander sent a strong and proper signal to the educational establishment, telling [illegible] colleges it cannot by fiat mean, gender and ethnic balance in the name of diversity. It is one that should hearten those who care about the future and integrity of our higher education system, now under threat from thought-control seminarists and assorted ideologues.

Monday, June 24, 1991 A11

Jeane Kirkpatrick

The Diversity Standard

Despite the repeated efforts of worthy people to persuade Americans that racial, sexual and ethnic quotas are necessary to achieve social justice, large majorities of citizens firmly and properly reject the argument. These opponents insist that quotas are incompatible with equal opportunity, fairness and the principle of reward based on merit. Both political parties know how unpopular quotas are, and each claims that it too rejects the concept.

Yet the use of quotas in some American institutions continues to spread. Some bureaucracies just beyond the reach of public opinion and democratic accountability make unacknowledged use of quotas to judge the "fairness," or "balance" or "diversity" of the institutions in which they operate.

Quotas by another name have been adopted by at least two powerful regional organizations that review American institutions of higher education and either grant or withhold accreditation: the Middle States Association of Colleges and Universities and the Western Association of Schools and Colleges.

Samuel Weiss of the New York Times wrote on April 13: "Traditionally a school's accreditation has depended on factors including the quality of its faculty, the size of its library collection and its financial resources. But in the last few years, the Middle States group and the Western Association of Schools and Colleges, which has jurisdiction in California and Hawaii, have begun stressing the need for colleges and universities to become responsible for promoting multi-cultural curriculums, racial harmony and increased representation of minority members on their faculties."

The Middle States group calls its requirement of a racial, ethnic and gender "mix" among faculty, students and governing boards "the diversity standard." It proposes that such "diversity" in personnel and curricula is a necessary requirement of an educational institution worthy of accreditation.

Regional accrediting associations are extremely powerful. They can make or break universities and professional schools. Their good opinion is courted. Months of effort are spent by institutions in preparation for a "review" or a "re-review" by an accrediting association.

These "reviews" are confidential, which protects the university or professional school being reviewed. And it also protects the reviewing process and the association conducting the review.

But from time to time, confidentiality is breached.

Two cases that became public in the past year provide information on how Middle States was applying the "diversity" principle. One involved the Westminster Theological Seminary of Philadelphia, whose accreditation was threatened because it did not have a woman on its governing board—even though the school claimed the gender composition of the board was mandated by its religious convictions.

The other case concerned Baruch College, a branch of the City University of New York, whose accreditation was withheld on grounds that the quota and because the rate of retention of "minority" students was lower than that of "non-minority" students.

Accreditation was restored when Baruch College submitted to Middle States a plan for correcting these "imbalances" in a manner acceptable to the association. But by then some Baruch faculty had publicly protested the treatment of their college, and a blue-ribbon advisory committee to the U.S. secretary of education had recommended that Middle States itself be reviewed to determine whether its accrediting powers should be renewed or curtailed.

Secretary of Education Lamar Alexander accepted this recommendation and expressed to the Middle States group his concern that accrediting colleges on the basis of "affirmative action programs" and multi-cultural curricula would infringe on academic freedom and, in the case of religious institutions, on freedom of religion as well. Forcing like standards on unlike institutions might actually reduce—not increase—diversity in higher education, Alexander observed.

"Should a regional accrediting agency dictate to institutions whether or how they should balance their students, faculty, administration and governing board by race, ethnicity, gender or age?" Alexander asked.

The answer is—of course not.

Democratic societies require public institutions that are inclusive and responsive to all groups and sensibilities. Sexual or racial discrimination by any name is unacceptable in such a society. But so are quotas. And so is imposing standards of conformity on educational institutions. Using power to impose popular ("politically correct") orthodoxies is especially incompatible with the requirements of a free society or of democratic pluralism.

Democratic pluralism does not mean cultivating identical "diversities" within all educational institutions.

A large, heterogeneous society such as the United States has a special need for real diversity in its scholastic institutions and a special need also for transmitting to diverse students the essential elements of American democracy. In a free society, suppressing differences, imposing uniformities, punishing non-conformity should never be the job of institutions that accredit schools.

It is said that the Middle States Association feels its autonomy has been infringed by being subjected to criticism and review. But such a protest would be ill-conceived.

The regional accrediting associations do an important job and wield important powers. Their power derives in part from their standing in the educational world. But it also derives from their influence on the allocation of federal funds. (For example, students at unaccredited institutions are not eligible for federal assistance.)

Accrediting associations are therefore responsible to society through its political institutions as well as to the educational establishment.

It is a very good thing that from time to time reviewers should also be subject to review.

Mr. WEISS. Thank you, Mr. Zeliff.

Mr. Secretary, it is the practice of the Government Operations Committee to swear its witnesses.

So I would like to ask not only you but also the other people on your staff who will be participating in the hearing to please stand behind their chairs and name plates.

If you will each stand up and raise your right hand.

[Witnesses sworn.]

Mr. WEISS. Let the record indicate that each of the witnesses has responded in the affirmative.

Thank you, Mr. Secretary.

I should say this is not just a pro forma exercise that we go through. The charge of the Government Operations Committee and its subcommittees is, in fact, to determine the truth.

We have found utilization of the oath, without question as to who it may be, who's testifying before us, is one way of providing equal treatment to all of our witnesses, and to be sure that, in fact, everyone understands the significance of the hearing that we are conducting.

It is not aimed specifically at you at this point, or any one of the other witnesses.

We do this for everybody with the aim of achieving the truth.

If you would like to proceed, Mr. Secretary, we are ready for your testimony.

STATEMENT OF LAMAR ALEXANDER, SECRETARY, DEPARTMENT OF EDUCATION, ACCOMPANIED BY TED SANDERS, PH.D., UNDER SECRETARY; MICHAEL WILLIAMS, ASSISTANT SECRETARY FOR CIVIL RIGHTS; JOHN CHILDERS, DEPUTY ASSISTANT SECRETARY FOR HIGHER EDUCATION PROGRAMS; AND STEVE WINNICK, ACTING GENERAL COUNSEL

MR. ALEXANDER. Thank you, Mr. Chairman.

Thank you for inviting me, and to Mr. Thomas and Mr. Zeliff and others, too. I am glad to be here.

I would like to introduce to the committee the Under Secretary Ted Sanders, Assistant Secretary Michael Williams, Deputy Assistant Secretary John Childers.

I believe Steve Winnick is also here, the acting general counsel.

We are here to try to do our best job of answering your questions.

Since I have only been the Secretary for about 3 months, if there are questions that have to do with the accreditation process or matters which happened before I arrived, I may ask them to help answer the question.

They are here for that.

Mr. WEISS. Because of that, we will be pleased to have them join you at the witness table at any time you think it is appropriate.

Mr. ALEXANDER. Thank you very much, Mr. Chairman.

As I indicated to your staff, I am not sure how long you need to go, but I will be happy to stay until about 11:45.

I have another appointment at noon.

If you need answers to further questions, I will be glad to respond to those or other members of the Department who are here will be glad to stay beyond that time if that would be helpful.

Mr. WEISS. We will try to accommodate your schedule. We can't be sure of exactly how many delays we have, because the House is in session. There may be votes on the floor.

Hopefully, we can go without interruption.

Mr. ALEXANDER. Thank you.

I think I should say, as we have discussed briefly beforehand, I am in the midst of a decisionmaking process in the case of Middle States Accrediting Association. I have accepted a recommendation of our advisory committee about deferring recognition of that association until we have more facts.

I have asked for there to be a hearing in the fall. Shortly after that I will make a decision about recognizing them again.

My preference would be to testify about that decision after I make it. But out of respect to the committee and to the Congress, I am happy to come today.

But I think I would not want to say anything that would prejudge that decision.

Mr. WEISS. Mr. Secretary, we will be asking questions about matters which have already occurred.

As to those matters, the determination to ask them and your obligations to respond, I think are quite clear.

We will look to see as we go along whether we have a problem or not.

Mr. ALEXANDER. Sure. I don't expect we will because I know you wouldn't want me to prejudge a decision I have not made yet.

Mr. WEISS. At the same time I don't want congressional prerogatives to be waived either implicitly or explicitly.

Mr. ALEXANDER. Your invitation asked me to testify in two areas. I have submitted a statement which I hope can be included as part of the record.

I would like to comment on it for a moment and then try to take any questions you may have of me about that or any other matter.

You asked me to comment on, and my statement addresses, two areas: Diversity as a tool for correcting discrimination, first; and diversity as a criterion for accrediting colleges and universities.

What I would like to do is to go first to your second question.

Diversity as a criterion for accreditation. This is the so-called Middle States case.

It came to my attention shortly after I became the Secretary in March. I made a decision on it 3 weeks later, on April 11.

Middle States, of course, is one of our six regional accrediting agencies in the country who accredit almost all of the academic based colleges and universities.

The more than 3,000 community colleges, colleges, and universities that most people think of as our system of higher education.

Mr. WEISS. Mr. Secretary, I notice you have a long prepared statement. Of course, that will be entered into the record in its entirety.

If you can summarize that statement in 10 minutes, I would appreciate it.

Mr. ALEXANDER. I am summarizing.

I came to testify. I assume you will want me to do that?

Mr. WEISS. Good.

Mr. ALEXANDER. Thank you.

The six regional accrediting agencies have for all practical purposes, they make the decision about whether a college or a university is accredited. I look at that somewhat from the point of view of a university president, which I was until a few months ago at the University of Tennessee.

Every 5 years or so we go through an accrediting process with one of those six accrediting agencies. That is a very important process to us, for a variety of reasons.

One of the reasons is about a third of our students have a Federal grant or a loan, and if we were not to be accredited, we could not accept a student with a Federal grant or loan.

I tried to think about how to take the issue that was presented to me and summarize it as you have asked, Mr. Chairman, take it out of an area of academia and put it into the public light.

I think the best way to do it might be to boil it down and say it this way. That what I wanted to know when I made the decision on April 11 was what is the Middle States agency doing and why does it think that is its job?

I came into the Capitol Building this morning through a screening devise by a policeman. I assume Congress wants to keep people out with guns or ensure only people who were safe came into the Capitol, and made an arrangement with a private security company or some security company or its own employees to keep people out who weren't safe.

They did that very well. I went through the proper procedure.

I suppose it would be possible for some security guard to also come in to you, Mr. Chairman, and say:

> Well, I have done my job very well. In addition to that, I have also made sure that half of the people who are spectators at the hearing today are women, and every other person is either an Asian American or a person of African American heritage. I am also not letting anymore Methodists in until we get more Baptists in, and I told some of the Presbyterians to change their religious belief.

I think what you might say to the guard was:

> Those are all very important issues, but we didn't hire you, or make an arrangement with you, to make decisions about the number of men and women in the Gallery or the religious beliefs of the people coming through the screening procedure.
>
> We didn't ask you to decide what the composition racially, or by ethnic origin, ought to be of our staffs or of the people who are spectators in the Gallery.
>
> Those are very important issues, but those are issues for other people to decide. We have a Constitution.
>
> Congress has passed some laws. We have some Federal agencies with those decisions, and we don't need a person that we hired to be in charge of security to be making those decisions for us, or for the other agencies.

That is the question that arises in my mind, and I think must have arisen in the minds of the advisory committee to me about accrediting, and about the activities of the Middle States Accrediting Association.

What are they doing and why do they think it is their job?

After the Korean war, the Secretary of Education, with the authority of Congress, entered into an arrangement with our accrediting agencies to make certain the colleges and universities, where people with GI bills went to, had a certain quality. So far as I

know, the Congress has never directed the Secretary, and the Secretary has never asked the accrediting agencies also to check on the racial, ethnic, or gender mix of a college and university, or to try to interfere with the religious beliefs of people attending one of those colleges or universities.

We have not sought to ask a private accrediting agency to tell Howard University how many Anglo Americans ought to be on its board, or to tell Jewish Theological Seminary how many Presbyterians ought to be on its faculty or on its board.

I wonder why, now, today the Middle States accrediting agency thinks that is part of its job. The reason it is of special concern to us is that we gave our gatekeeper, the accrediting agency, a very large weapon. That is the right to remove from the college or university which is not accredited the right to take students with Federal grants or loans.

So the question which I am asking our advisory committee to look into, in August, is what are they doing and why are they doing it, and why do they think it is their job? These are important issues. It seems to me like they are getting into areas that we didn't arrange with them to become involved.

The second question that you asked me was diversity as a tool for correcting discrimination. On that subject I would summarize my remarks in this way.

I found when I came to Washington that diversity means different things to different people. To me, it has always meant variety. Our family lived in Australia for a few months in 1987.

We looked back at America and saw how big it was, and how free it was, and how many people of many different backgrounds go here, and came to realize even more that this is the great strength of our country. When I went to law school in your congressional district, I wrote the dean and asked to room with somebody from as different a background as he could put me with, because I wanted to know different kinds of people.

When I was president of the University of Tennessee, I worked very hard to recruit more international students, more black students, black coaches, the first black administrators, the first in high positions, the first woman vice president of a university, not because anyone came around and told me to do it, but because I thought that created the kind of university community that I thought was better for our students and our State and our country.

Every year I go to our family reunion and I take our children, as our grandfather took me, and I show them where our Scotch-Irish ancestors are buried. I hope they remember that because their culture, their background is very important.

I was talking with my law school roommate, the other day, who grew up in New Jersey. He was going to what might best be described as an Italian Catholic school. We talked about the Polish Catholic school down the street. That is an important part of America.

I visited Public School 25 in the South Bronx. Sixty-nine percent of the students are Hispanic Americans. They talk about the George Washington Bridge and Simon Bolevar, and George Washington is the father of our country and Simon Bolevar of the South

American countries from which many of them come. It helps them understand their culture, as well as America.

As I think about diversity as a tool for correcting discrimination, I think about the importance of recognizing variety in America as an important value, but I worry sometimes that we spend so much time celebrating our differences that we don't spend a sufficient amount of time forging the idea, that we call America.

Finally, in the end what makes this country work is the common culture that we have. I saw a wonderful letter in the Baltimore Sun the other day. I would like to conclude with it.

It is from a student at the University of California, Berkeley named Lorenzo Munoz, who is a sophomore who went there because of the diversity at the University of California, Berkeley. This student is disturbed by what he sees there, and says that if we persistently focus on our obvious differences, such as skin color and, race and ethnic origins, we will never be able to live together in one United States of America and then tells this story:

"The other day as I was walking through Lower Sproul into Berkeley, I noticed a group of children probably 6 or 7 years old on a field trip. There were black boys and girls playing with Latino boys and girls.

They would hold hands and run after each other, clearly enjoying each other's individual personalities. As I made my way up the steps to the plaza, I noted the conspicuous absence of color blind friendships.

Each race was occupying a different corner of the plaza. Maybe we intelligent, elite college students could learn a few things from those kids.

I think as a country as we talk about diversity, we need to think very carefully about any action by an accrediting agency that would tend to reduce rather than decrease diversity among our colleges and universities and any remedy or application of a cookie-cutter way of diversity in this country that would tend to cause us exclusively to focus on celebrating our differences rather than spending time forging the idea that is America.

[The prepared statement of Mr. Alexander follows:]

Statement of Lamar Alexander
Secretary of Education
Before the

HOUSE GOVERNMENT OPERATIONS'

SUBCOMMITTEE ON HUMAN RESOURCES

AND INTERGOVERNMENTAL RELATIONS

June 26, 1991
10:00 a.m.
2154 Rayburn House Office Building

June 26, 1991

Statement of Secretary of Education Lamar Alexander

Mr. Chairman, and members of the Subcommittee, I am here at your request to testify about "diversity as a tool for correcting discrimination and as a criterion for accrediting colleges and universities."

Let me address the second issue first--diversity as a criterion for accreditation. This issue came to my attention in the so-called "Middle States case." The Commission on Higher Education of the Middle States Association of Colleges and Schools ("Middle States") is the accrediting agency for more than 500 degree-granting institutions within New York, New Jersey, Pennsylvania, Maryland, Delaware, the District of Columbia, Puerto Rico, and the Virgin Islands. When I became Secretary in March, one of the first decisions that I had to make was to respond to a recommendation concerning Middle States that I received from our Department's National Advisory Committee on Accreditation and Institutional Eligibility. This Committee recommended that I defer Middle States' petition for renewal of Department recognition. The Committee was concerned that Middle States might have inappropriately deferred the accreditation of Baruch College of the City University of New York and the Westminster Theological Seminary.

The question before me was whether or not to accept the recommendation of the National Advisory Committee. How Middle States goes about accrediting colleges and universities is a serious matter, because the loss of accreditation may well lead to the suspension of an institution's federal funding, including its ability to enroll students who bring with them Federal student aid. Since about one of two American college students now has a Federal grant or loan, this is a powerful weapon and must be judiciously exercised.

As I understood the facts before me, Middle States had threatened not to reaccredit Baruch and Westminster because these two institutions had not satisfied a recently imposed "diversity" standard. I questioned whether a regional accrediting agency should "dictate to institutions whether or how they should balance their students, faculty, admininistration and governing boards by race, ethnicity, gender or age." Since the President of Baruch at the time had said that the faculty there was 18% minority--a figure larger than may be found in most universities and colleges, even in the Middle States region--it was not clear to me why Baruch had been singled out. The case of Westminster Theological Seminary presented a different issue. This seminary seemed to have been threatened with loss of accreditation because its governing board is all-male. Yet it is a seminary for a branch of Reformed Presbyterianism that, based on its view of the Bible as well as the teachings of John Calvin, does not ordain

women as ministers or elders, and requires board members to be ordained. Middle States' attempt to compel Westminster to add a woman to its board raised with me a serious question of infringement of religious liberty.

On April 11, I decided to accept the recommendation of the National Advisory Committee. I asked the Committee to gather more facts on these questions and to hold a public hearing this fall. I wanted more thoughtful consideration of these important issues.

Major editorial voices generally supported my decision. The New York Times commented, "Diversity is an inescapable issue. But it is not a simple one. That's why it's appropriate for Mr. Alexander to insure that any such standard is not unfairly wielded like a club to micromanage individual colleges and universities." The Wall Street Journal called the decision "a strong and proper signal to the educational establishment." The Washington Post observed "It's quite true that a college's ethnic and gender balance are related directly to its educational values. But those are decisions for each college to make for itself as it defines its own mission. There are certain basic rules of fairness on which American society insists, and they have been written into law--with deep consideration and endless debate--by Congress and the courts. Beyond that, it's up to each college to carry out its responsibilities.".

Three points about my decision should be noted. First, it was a preliminary decision. Only after the hearing this fall will there be a determination about Middle States' petition to renew its recognition as a reliable accrediting agency.

Second, my preliminary decision reflects my concern for institutional autonomy as well as academic and religious liberties. Middle States is the only accrediting agency with across-the-board accrediting authority in the mid-Atlantic area. It defines the scope of its operations as all degree-granting institutions in the region. As a regional accrediting agency under the Higher Education Act, Middle States serves as the primary regional gatekeeper for participation in the guaranteed student loan program and other federal financial aid programs. And even for those institutions in the Middle States area for which there is an alternative recognized accrediting agency that could provide accreditation, the revocation of accreditation by Middle States may cause the institution to lose eligibility for federal aid. Since federal law in this way confers such great power on Middle States, I want to make certain that I do not indirectly sanction coercive restrictions on institutional independence or on the academic or religious freedom of degree-granting institutions in the mid-Atlantic area.

Third, the U.S. civil rights laws applicable to recipients of federal education funds--including Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972--reflect our national policy on what institutions must or may do to protect individual liberty and civil rights. Congress has set federal policy and charged specific federal government agencies, including the Office for Civil Rights at our Department, with enforcing those laws. There is a question in my mind, therefore, as to why a voluntary, non-governmental accrediting agency should also wield federal power in this area.

So where matters stand now is as follows: The Department staff is collecting information for the Committee about how Middle States applies its "diversity" standards; the Department's National Advisory Committee will convene a full hearing in the fall; the Committee will report back to me after deliberating about these issues and reviewing the facts. Then I will make a decision in this matter. It would be inappropriate now to prejudge or predict the final resolution of this matter.

Let me now turn to broader issues raised by your questions about diversity. I have discovered, especially since coming to Washington, that the word "diversity" has diverse meanings, depending on who is using it and for what purpose. To most, diversity means variety. Variety is one of America's unique strengths. That so many of us come from so many different backgrounds is one example of our diversity or variety.

The variety that exists among colleges and universities is another example. Among the more than 3,000 colleges and universities in this nation are a significant number that have chosen--consistent with our traditions--to have a special purpose, such as historically black colleges, women's colleges, religious seminaries, and colleges with a unique curriculum. I am thinking of institutions like Fisk, Wellesley, St. Mary's Seminary, Julliard, St. John's College, Jewish Theological Seminary, Colorado School of Mines, and the Rhode Island Schools of Design. This variety has served our nation well. It offers more meaningful choices. It would surely be ironic if accrediting agencies were, in the name of diversity, to compel more of our institutions to look alike.

This diverse system of college and universities has worked remarkably well to open the doors of opportunity, especially to Americans who may have suffered various forms of discrimination, or, for other reasons, simply been left behind.

Let me illustrate. In 1969, 42% of undergraduates were women. Since 1978, however, women have been a majority of all college undergraduates in the United States, and today 55% of all undergraduates are women. At the graduate level, growing numbers

of women are pursuing the educational opportunities so necessary for a successful career; women now account for 50% of all graduate and professional students in this country. Minorities too have made steady progress in enrollment in higher education. Fifteen years ago, 15.7% of all students in higher education were members of minority groups; that number has grown steadily and in 1988 stood at 18.9%. Among minorities, black Americans have increased their participation in higher education. In 1965, blacks accounted for less than 5% of all college and university students under the age of 35; as of 1989 they were over 10%. In absolute numbers, black enrollment numbers in higher education have more than quadrupled.

You also invited me to talk about "diversity as a tool for correcting discrimination." I'm not sure what you have in mind. If you are asking whether the Federal Government should require racial or ethnic or gender balancing at colleges and universities as a condition of receiving federal funds, my answer is no. Nothing in the law or in court decisions supports such a policy. On the other hand, it is certainly appropriate for a court or an authorized administrative agency to fashion a remedy that takes race or gender into account upon finding that an institution is guilty of discriminatory actions. One of our most important jobs at the Department of Education is vigorous enforcement of the federal civil rights laws at institutions receiving federal education money.

Our strength as a nation lies in pluralism, especially the diversity of our people. It lies, too, in our shared sense of citizenship. We have become the first universal nation. I can't think of another nation that has gathered together the sons and daughters of every other nation and every other continent and so successfully formed a common culture. We celebrate our differences. They give us resourcefulness, creativity, energy, strength--and an appeal that continues to attract more new Americans from all corners of the globe. But what makes our nation finally work is a spirit of tolerance and mutual respect for our differences and a zeal for continuously forging this idea we call America. In a world torn by nationalism, tribalism, religious and ethnic conflicts, the United States of America stands out as a successful multi-ethnic, multi-racial, multi-religious society.

Perhaps the most important contribution that all of us can make towards promoting real success in higher education for students from so many different backgrounds is to improve elementary and secondary education. If America meets our national education goals for the year 2000, there will necessarily be a larger number of poor and minority students who graduate from high school and have the necessary educational background to enter and succeed in college; there will necessarily be a larger number of

poor and minority students who are prepared to teach in schools, colleges, and universities; and there will necessarily be a larger number of college graduates from many different backgrounds who are educated well enough to enter and succeed in every field of endeavor in American society.

Mr. WEISS. Thank you, Mr. Secretary.

Before we proceed to questions, let me take note of the fact that we have been joined by the distinguished chairman of the full Committee on Government Operations, Mr. Conyers.

I would like to recognize him for whatever opening comments he might wish to make.

Mr. CONYERS. Thank you.

I want to join you in welcoming the Secretary here today.

These are important matters. We think this inquiry has a far-reaching scope. I am very interested in it.

I would like to come back to a few questions in a short time if I can.

I want to commend you for the excellent work you have done in this area, Chairman Weiss.

Mr. WEISS. Thank you.

Mr. Secretary, if you would like to have your associates join you at the table so we will not have this back and forth movement.

I think that would be appropriate at this point.

Would you prefer to just sit there by yourself, wait until we get questions?

Mr. ALEXANDER. I would prefer that, but if it becomes necessary, I will move them quickly up so I don't waste your time.

Mr. WEISS. Let me start by asking you which office in the Department of Education first receives and reviews petitions for recognition from accrediting agencies?

Mr. ALEXANDER. Which?

Say that again, Mr. Chairman.

Mr. WEISS. Which office within the Department of Education first receives and reviews petitions for recognition from accrediting agencies?

Mr. ALEXANDER. I think if your questions are of the procedural kind on accrediting agencies, Mr. Chairman, I will ask Dr. Sanders or Mr. Childers to step up and answer those questions.

Mr. Childers, you were sworn in. If you would take a seat at your name.

You have heard the question?

Mr. CHILDERS. I have.

Mr. Chairman, the first point of contact with the Department for an accrediting agency is our accrediting agency evaluation branch. That is the first place that an agency would send its petition for recognition.

Mr. WEISS. Before we proceed, would you identify yourself as to what your role is within the agency?

Mr. CHILDERS. My name is John Childers. I am the Deputy Assistant Secretary for Higher Education Programs. Within the Office of Higher Education Programs is located the Accrediting Agency Evaluation Branch that I just referred to.

Mr. WEISS. Does the Office of Post Secondary Education review the petitions to be sure that the accrediting agencies are in compliance with the Department's regulations?

Mr. CHILDERS. The petitions received by the branch are reviewed, yes.

Mr. WEISS. Does the Office of Post Secondary Education submit recommendations based on its investigation to the National Advisory Committee on Accreditation and Institutional Eligibility?

Mr. CHILDERS. Along with the materials actually submitted by the accrediting agency to the Department, there is a staff analysis of those materials that is submitted to the National Advisory Committee on Accreditation and Institutional Eligibility prior to its meetings.

Mr. WEISS. Besides in-house, is there a recommendation?

Mr. CHILDERS. Normally there is a recommendation as well.

Mr. WEISS. Is the role of the committee to provide advice to you in regard to your decision to recognize or not recognize the accrediting agencies?

Mr. CHILDERS. The role of the national advisory committee is to provide advice to the Secretary on recognition or nonrecognition of an accrediting agency.

Mr. WEISS. Does the Office of Post Secondary Education also submit recommendations on whether to recognize accrediting agencies or not recognize them?

Do you make that recommendation to the Secretary, Mr. Childers?

Mr. CHILDERS. Recommendations are made to the Secretary, yes.

Mr. WEISS. OK.

Did the Office of Post Secondary Education review the petition for recognition submitted by the Commission on Higher Education of the Middle States Association of Colleges and Schools?

Mr. CHILDERS. Yes, the agency accrediting branch reviewed its petition.

Mr. WEISS. Did the Office of Post Secondary Education recommend to the advisory committee that the petition be approved because Middle States was in, "full compliance with the Department's criteria?"

Mr. CHILDERS. The staff recommendation to the advisory committee recommended continuation of Middle States as an accrediting agency, but pointed out several issues we thought the national advisory committee should discuss. One of those was whether or not the diversity standard itself was generally accepted.

Another one was whether or not it had been consistently applied to institutions in the Middle States area.

There is a third concern we had about Middle States dealing with the ability to benefit issue. At the earlier stage the staff did recommend before the hearing that Middle States should be continued but pointed out problems in ability to benefit and in the area of diversity.

Mr. WEISS. But, indeed, the quotation that I gave you appears in the staff analysis and recommendation; is that not true? That is that the petition be approved because Middle States was, "in full compliance with the Department's criteria"?

Mr. CHILDERS. Before I swear to the absolute accuracy of very precise words that I don't have in front of me, I would want to look at them.

In general, the recommendation was to approve Middle States.

Mr. WEISS. Thank you.

On January 28, 1991, the Assistant Secretary for Post Secondary Education submitted staff recommendations and a report of the advisory committee to Dr. Sanders, who was the Acting Secretary of Education at this time.

What was the Assistant Secretary's recommendation for the Middle States agency, Dr. Sanders?

Dr. Sanders, you have been sworn in. You have heard the question.

Dr. SANDERS. Mr. Chairman, would you please restate the question?

Mr. WEISS. On January 28, 1991, the Assistant Secretary for Post Secondary Education submitted staff recommendations and a report of the advisory committee to you. You were, at that time, the Acting Secretary of Education.

What was the Assistant Secretary's recommendation for the Middle States agency?

Dr. SANDERS. My recollection is the Assistant Secretary recommended continuing the recognition of Middle States.

Mr. WEISS. Were you aware of the Assistant Secretary's recommendation, Secretary Alexander?

Mr. ALEXANDER. When, Mr. Chairman?

I was president of the University of Tennessee in January 1991.

Mr. WEISS. Before you made your April 11 decision.

Mr. ALEXANDER. Yes, Mr. Chairman.

Mr. WEISS. This recommendation, I assume, was not made lightly? It was made after months of intensive review; is that correct, Mr. Childers?

Mr. ALEXANDER. I have no idea, Mr. Chairman.

Mr. WEISS. Dr. Sanders.

Dr. SANDERS. That would be my presumption, Mr. Chairman.

Mr. WEISS. Mr. Childers.

Mr. ALEXANDER. Mr. Chairman, we can't guess what was in the mind of someone who is not here.

Mr. WEISS. I am asking about the recommendation by the Assistant Secretary.

Mr. ALEXANDER. You are asking whether it was made lightly. I don't think any of us is in the position to know whether Dr. Haynes recommendation was made lightly or not. He was a well-respected member of the Department.

I accepted his recommendation as well as Dr. Sanders advice, considered it and decided Dr. Haynes was wrong, and made my decision and agreed with the advisory committee and asked for the decision to be deferred.

I said I wanted to know more about why a private accrediting agency was asking a religious seminary to change its beliefs. Why was it doing that? Who gave it that job?

I assumed if it could do that, it could also say to any other seminary or religious institution what it ought to be doing. While those were important questions, I thought the Congress and the institution and other government agencies had that job and that the private accrediting agencies did not.

I was surprised to see that they were involved in those sorts of activities.

Mr. WEISS. The Assistant Secretary recommendation was then overruled; is that correct?

Mr. ALEXANDER. The Assistant Secretary's recommendation was advice to me, that was considered. Then I made my decision, which is the only decision that counts in this case.

Mr. WEISS. The Assistant Secretary who made the recommendation was Dr. Leonard Haynes.

He was fired by you; isn't that correct?

Mr. ALEXANDER. Mr. Chairman, Dr. Haynes submitted his letter of resignation to the President and left in June. When I came in I talked with members of the Department about forming a team to do what I thought needed to be done.

Dr. Haynes and I talked about that. He decided as a result of those conversations to resign. When he resigned, I wrote him, as I told him privately, that I thought he performed his job well.

I am sure he will move on to other distinguished careers.

Mr. WEISS. Again, let me see if I can clarify that response. You are not suggesting that he wanted to leave, that it was a voluntary leaving on his part, are you?

Mr. ALEXANDER. We had a discussion, Mr. Chairman. I am not sure it is necessary for Dr. Haynes' point of view.

If you want to bring that discussion in public, that is up to you. I don't think that is necessary. It is the prerogative of the President to make those appointments.

He resigned in a letter he wrote as a result of our discussion about the kind of team we wanted to form. We had that discussion shortly after I arrived.

Mr. WEISS. As a matter of fact, on March 26, 1991, Dr. Haynes was called into your office. There were some other people present.

You then told Dr. Haynes that you and the President have decided to make a change, and wanted his resignation effective May 31? Isn't that correct?

Mr. ALEXANDER. I talked to him about that, Mr. Chairman. I see no need to put that in public.

If the question is did I want to make an appointment of a different person in that job and did I tell Dr. Haynes that within the first week or so after I arrived, the answer is yes, I did.

Mr. WEISS. We are asking it because of the context within which the recommendation was made and then the firing took place and then the decision by you subsequent to the firing.

At this point, I am going to yield for questions.

Before we go to Mr. Thomas, let me take note of the fact that Ms. DeLauro from Connecticut has arrived.

If you have any opening comments you would care to make at this point, we would be pleased to have them.

Ms. DELAURO. Mr. Chairman, I would like to commend you for holding the hearing and thank the Secretary for his testimony. I apologize for not being here for your testimony.

I ask my opening statement be entered into the record.

Mr. WEISS. Without objection, that will be done, as will documents that we refer to from time to time.

[The prepared statement of Ms. DeLauro follows:]

STATEMENT OF THE HONORABLE ROSA L. DeLAURO

SUBCOMMITTEE ON HUMAN RESOURCES AND

INTERGOVERNMENTAL RELATIONS

JUNE 26, 1991

Mr. Chairman, thank you for holding this hearing on the use of diversity in the process of accrediting colleges and universities.

On one level, this hearing will seek to address the use of diversity standards by accrediting agencies. And on the second level, this hearing will go to the heart of the debate about what the Administration's position is on the role and rights of minorities and women.

Congress has come a long way in developing laws to end discrimination. To reverse that pattern, whether in our schools, the workforce, or within the policies of the Department of Education would be a step backward.

I believe diversity is a vital element in our colleges and universities. Therefore, I am particularly interested in where the Department of Education is headed with this issue.

I hope that Secretary Alexander will be able to provide us with some answers to a very complex and sensitive issue. I welcome him to the Subcommittee and look forward to his testimony. Thank you, Mr. Chairman.

Mr. WEISS. At this point I am pleased to yield to the distinguished ranking member, Mr. Thomas.

Mr. THOMAS. Thank you.

Mr. Secretary, the discussion in the hearing seems to turn on a decision with respect to Middle States. What is the status of Middle States in terms of your decision?

Let me ask further what opportunity will Middle States and other parties have to have input prior to this decision if it indeed has not been made?

Mr. ALEXANDER. Thank you for the question.

What I have done is exactly what the national advisory committee appointed to advise the Secretary about matters like this recommended that I do, which was defer. I made a decision April 11, to defer, to this fall, a final decision about reaccrediting, recognizing this accrediting agency.

I stated what my concerns were, which followed very closely the concerns of the advisory committee which had been appointed by my predecessors. What I have asked for is that all those who wish to make comments on this decisionmaking process, do so by July 31, so there is still plenty of time for others to submit that in writing.

I have asked the committee to hear from Middle States itself, about any information it has.

What I want to know is what were they doing, and why were they doing it and why do they think that is their job? Then there will be a hearing in the fall by the advisory committee based on all these facts they have gathered, then they will make a recommendation to me.

I will consider their recommendation and then I will make a final decision about whether to grant recognition to the Middle States Accrediting Agency at that time.

Mr. THOMAS. Wiil this decision have some direct impact on how the Department will see the accreditor's role with respect to diversity?

Mr. ALEXANDER. I think the answer to that is yes, Mr. Thomas.

I think the actions of Middle States in the cases of Westminster Theological Seminary and Baruch College specifically, in the first case what appears is the accrediting agency was ordering a religious denomination which does not ordain women and only allows ministers to serve on the board of its seminary, nevertheless, to have a woman on the board.

In the other case, Baruch College, which has according to its president, more than 18 percent of its faculty minority, which is far in excess of what most colleges and universities have, that that wasn't a sufficient balance. In both of those cases it ordered them to make changes or to not receive accreditation.

If this accrediting agency or any other accrediting agency is going to get into the business of establishing gender or ethnic mix of the faculty, board or student body of a college or university as a prerequisite for accreditation, we are going to have to think about the effect that has on the arrangement we have with the accrediting agencies to do the accreditation.

They are not the only policemen we can make an arrangement with to tell us whether the colleges and universities who receive

students with Federal grants and loans are good colleges and universities or diploma mills. That is what we are interested in, is the quality of academic institutions.

There are other government agencies, courts, the Department of Justice and the constitution that have the job of looking at whether the Federal civil rights laws have been violated.

Mr. THOMAS. It is your view, that there are other mechanisms to enforce what I think we would all agree is a necessary component, and that is civil rights?

Mr. ALEXANDER. The answer to that question, Mr. Thomas, is yes, I know there are other mechanisms. I think it is the first responsibility of the board and the president of each college and university campus to, not to discriminate.

Even in my case, when I was president, and I think in most cases, presidents try to create communities of many different backgrounds. The question I was raising is why does the gatekeeper for student loans then have the right also to be the policeman for civil rights on the campuses?

I wonder why they are doing that, who gave them that job? That is the question I am asking.

Mr. THOMAS. I guess this is more for information. I am not sure I understand the relationship between the Department and the accrediting agency. How does that fit together?

Mr. ALEXANDER. Thank you, Mr. Thomas.

In the simplest sense, the Department has asked—the Department recognizes accrediting agencies and asked those agencies to tell the Department whether a college or a university is a college or university of academic quality or whether it is just a diploma mill.

Members of Congress are putting a lot of pressure on the Department about student loan defaults, for example, and want us to crack down in some cases on some institutions which may be taking students that are not real institutions because that is a waste of taxpayers' money. Money that could go to other students at other institutions.

Congress has told the Secretary in the law to look for reliable authorities of the quality of education. We have chosen to use accrediting for that purpose at least since after the Korean war and the GI bill. It is not the only option we have.

There are State licensing agencies or we could do it ourselves. But we have so far decided to allow accrediting agencies to do that.

They have agreed to do it. In response we have given them a very powerful weapon. If they fail to accredit Westminster Theological Seminary or Baruch, it is not only a stigma.

It may mean the loss of over half of their student body.

Mr. THOMAS. How would you respond to the characterization that the Department of Education has mounted an assault on civil rights?

Mr. ALEXANDER. Mr. Thomas, I would say with respect to that anyone who thinks that, I would invite them to look a little bit more carefully at what we are doing.

I think what we are trying to do is to ask the gatekeeper for student grants and loans to stick to its job. Then it is our job as part,

one of our major jobs at the Department of Education is to enforce civil rights at colleges and universities.

We have an office that does that. The Department of Justice does that.

I think we are doing our job well. We regard it as a very important job. We have not asked the accrediting agencies for help with that.

Mr. THOMAS. Thank you, Mr. Chairman.

Mr. WEISS. Mr. Zeliff.

Mr. ZELIFF. I am trying to understand a little bit better, Mr. Secretary, the role of the accrediting bodies. Maybe you can help me.

Who gives the responsibility to the private accrediting bodies to set quotas for colleges and universities?

Mr. ALEXANDER. I don't know the answer to that question. I have not used the word "quotas." I noticed it was picked up in a press release from the committee. Perhaps I did once. Certainly, the Department of Education did not ask any accrediting agency to tell us whether the University of New Hampshire, for example, has the correct mix of men or women, or the correct mix of persons of different religious beliefs, or different ethnic backgrounds, or race as part of the student body or its faculty or its governing board.

Our Office of Civil Rights might ask that question. The Department of Justice might ask that question. Private individuals might ask that question. None of us have asked the accrediting agencies to give us information about that.

We asked them to tell us whether the University of New Hampshire has sufficient quality so it should be certified as a place where students with Federal grants and loans may go to continue their education.

Mr. ZELIFF. This is a role they are assuming?

Mr. ALEXANDER. I assume so. And I suppose I shouldn't speak for them, I suppose they would say, well, we are a voluntary organization, and colleges and universities who are members have agreed to what we are doing.

One reason I am raising this question is to make sure that college presidents, who are very busy people, know exactly what their accrediting association is doing and to approve of it's actions.

I have heard from a lot of college presidents who do not approve of it.

Mr. ZELIFF. So, this then does interfere with their institutional autonomy, responsibility.

Mr. ALEXANDER. I believe that it would, and that is one reason I am raising the question, and I have asked the advisory committee to ask the accrediting agency just what it is doing and who gave it that job.

Mr. ZELIFF. I think it is a good role. I can see how serious this is in our eyes, and to delay that decision to get more information seems to make sense. How do the members that make up those bodies get selected or appointed, and who do they answer to, or who do they report to?

Mr. ALEXANDER. I am going to ask Mr. Childers to respond to that question, Mr. Congressman.

Mr. CHILDERS. Accrediting agencies, Congressman, are voluntary associations. They appoint and hire their own staff, and they basi-

cally are composed of representatives, officials of the colleges and universities that make up the accrediting association.

Mr. ZELIFF. So they become kind of a peer group review?

Mr. CHILDERS. Yes, their major role is peer review of institutions, as the Secretary has stated, peer review to determine the quality of the education offered in those institutions.

Mr. ZELIFF. Are there regulations set up by you, Mr. Secretary, relative to regulating these bodies, or do they have guidelines of any kind?

Mr. ALEXANDER. We regulate—the Secretary regulates the process by which the Secretary recognizes these accrediting agencies for the purposes of determining whether colleges and universities are appropriate places for students with Federal grants and loans, so there are those regulations.

Mr. ZELIFF. But not regulations relative to anything to do with diversity, or quotas, or anything of that kind?

Mr. ALEXANDER. So far as I know, there is not a regulation by the Secretary that exists today that has to do with diversity and accrediting agencies. Is that correct, John?

Mr. CHILDERS. That is correct, Mr. Secretary. The criteria for recognition do not speak to diversity.

Mr. ZELIFF. Mr. Chairman, I just have a couple more questions, if I could. Mr. Secretary—do you feel you have the authority to oversee and enforce the laws, have the right to intervene in accrediting groups' decisionmaking, do you feel you have that right and authority based on your position?

Mr. ALEXANDER. Mr. Zeliff, I do not want to be the accreditor of colleges and universities, that is why we have made this arrangement with the accrediting agencies. They have traditionally performed an extraordinarily valuable function in American higher education in helping colleges and universities, consider how to continue to improve their academic quality.

So—however, I—and let me say also that I suppose that one reason this elaborate peer review situation was set up, which in effect gives a monopoly to—and generally speaking, to the regional institutions for most colleges and universities, for example, if the University of Tennessee were not accredited by the Southern Association, our only remedy would be to apply directly to the Secretary.

I think I have to watch that very carefully to see whether the accrediting associations are sticking to their knitting, which is the academic quality of the University of Tennessee, or whether they are developing a broader agenda.

If they are developing a broader agenda, I don't think the Secretary should be loaning, to their broader agenda, in a monopolistic situation, the huge weapon that might deprive students of Federal grants and Federal loans.

To that extent, I think I have a responsibility to consider whether the accrediting agencies ought to limit their activities—whether accrediting agencies are going too far afield when they get into a social agenda that includes cultural diversity.

Mr. ZELIFF. Certainly then in terms of looking at these diversity standards, you want to make sure they are not used as a club to micromanage individual colleges and universities?

Mr. ALEXANDER. That is correct. I think we ought to have lots of diversity among colleges and universities, and a college campus ought to be able to consider for itself what kind of community it has, subject to the Federal civil rights laws and the constitution.

I don't think we need private accrediting agencies making that decision for them. That is the question before me, and the one I would like to gather more information on.

Mr. ZELIFF. Thank you very much.

Mr. WEISS. Thank you very much.

Before I go to the majority side for further questions, I want to ask some questions to set the framework again, with your permission, and I will get back—you will be on next after that.

Mr. Secretary, just to keep the record clear, as to who mentioned quotas in what context, in your April 11 decision, you state on page 3 that the application of Middle States diversity standards could conceivably cause violations of Federal civil rights laws.

You do acknowledge, in fact, you made that statement?

Mr. ALEXANDER. I think I must have if you are reading from my statement. I believe that may be the only time I used that word, and have not used it since, in connection with this case, that I can remember. If you are reading from my statement——

Mr. WEISS. I am indeed. In your April 11 decision, states:

> I have become concerned about the Commission on Higher Education of the Middle States Association's adoption and mix of certain standards that require what CHE considers the appropriate ethnic, racial, gender, and age diversity or balance among the faculty and governing board of an institution as a condition for accreditation.

Your April 11 decision is a departure from the position on diversity described in former Secretary Cavazos' September 15, 1990, letter to colleges and universities, in which the former Secretary announced the formation of a task force to promote diversity. The former Secretary invoked the name of President Bush in announcing this new policy.

Has the President directed you to rescind that policy?

Mr. ALEXANDER. No, Mr. Chairman. I would strongly disagree. I think that is the heart of the discussion today, what you just said. I am all for diversity. I think variety—people from common backgrounds, different backgrounds, is an important part of what gives America its strength, its energy, its resonance and its appeal.

What I am questioning is why a voluntary accrediting association thinks it is its business to tell a theological seminary and another college exactly what diversity should mean on that campus. I wonder why that is its business.

Mr. WEISS. Well, Mr. Secretary, we will put the entire letter in the record.

[The letter follows:]

UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

April 11, 1991

Dr. Howard L. Simmons
Executive Director
Commission on Higher Education
Middle States Association of
Colleges and Schools
3624 Market Street
Philadelphia, Pennsylvania 19104

Dear Dr. Simmons:

Enclosed please find my decision regarding the petition for renewal of recognition submitted by the Commission on Higher Education of the Middle States Association of Colleges and Schools. If you have questions about this decision, please contact Mr. Charles I. Griffith, Director of the Division of Agency Evaluation and Support, Office of Postsecondary Education.

Sincerely,

Lamar Alexander

Lamar Alexander

Enclosure

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-0100

UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

April 11, 1991

Decision of the Secretary of Education Remanding Petition for Renewal of Recognition of the Commission on Higher Education of the Middle States Association of Colleges and Schools

---

The matter before me is the petition for renewal of recognition submitted by the Commission on Higher Education of the Middle States Association of Colleges and Schools ("CHE"). The scope of the renewal petition is for recognition as an accrediting agency for degree-granting postsecondary institutions within five Mid-Atlantic States, the District of Columbia, Puerto Rico and the Virgin Islands, as well as other institutions defined in CHE's petition. CHE's July 9, 1990 supplemental submission, p. 1. For reasons stated below, I am remanding this matter to the National Advisory Committee on Accreditation and Institutional Eligibility ("Advisory Committee") to address issues relating to what CHE terms its "diversity" standards. Of course, pending this review and a final decision on CHE's petition, CHE will continue to be included on the published list of recognized accrediting agencies.

The Importance of Accreditation Decisions of Department-Recognized Agencies

In order for a postsecondary institution and its students to be eligible for many types of Federal financial assistance, it must be accredited by an accrediting agency recognized by the Secretary of Education (unless one of the statutory alternatives to such accreditation applies). To ensure that federal money devoted to postsecondary education is spent wisely, the Higher Education Act requires the Secretary of Education to recognize only those accrediting agencies that he determines to be "reliable authorities" as to the "quality of training" or education offered by those postsecondary institutions within the scope of an agency's operations. See 20 U.S.C. 1085, 1088, 1141, et al.; 34 C.F.R. Part 602; 53 Fed. Reg. 25088 (July 1, 1988).

About one out of every two postsecondary students in this country now receives some form of federal financial assistance. For that reason, accreditation by a recognized agency is for most institutions not simply a matter of choosing to affiliate with like-minded institutions in a voluntary association; it is a matter of necessity.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202-0100

CHE is the only currently recognized regional accrediting agency for a broad range of postsecondary institutions in the Mid-Atlantic area. CHE thus wields considerable power in making its accreditation decisions. Moreover, even for those institutions for which there is an alternative recognized accrediting agency that could provide accreditation, the revocation of accreditation by CHE may lead to loss of eligibility for federal aid. 20 U.S.C. 1085(n), 1088(a)(3),(e).

Statutory and Constitutional Considerations

In reviewing CHE's petition, I have become concerned about CHE's adoption and application of certain standards that require what CHE considers "appropriate" ethnic, racial, gender, and age diversity or balance among the faculty and governing board of an institution as a condition for accreditation. See CHE's "Characteristics of Excellence in Higher Education", pp. 1, 25, 32. I can certainly understand why a college or university might try to attract students,' faculty and employees of very different backgrounds. America is a country of people from a variety of backgrounds and experiences. That is part of its unique strength. Many colleges and universities seek to become communities reflecting the variety that is America. Other colleges and universities have chosen different missions for themselves. In light of the enormous variety among colleges and universities in this country, should a regional accrediting agency dictate to institutions whether or how they should balance their students, faculty, administration and governing boards by race, ethnicity, gender or age?

I am concerned that CHE's prescription and application of diversity standards as part of the accreditation process may undermine the reliability of accreditation decisions as basic indicators of an institution's adequacy in providing training and education to its students. For example, certain submissions the Department has received with regard to Bernard Baruch College of City University of New York suggest that CHE found Baruch to be an excellent academic institution but nevertheless threatened Baruch's accreditation for allegedly failing to hire an adequate proportion of minority faculty and administrators.

I am also concerned that CHE's prescription and application of diversity standards as part of the accreditation process may interfere with a postsecondary institution's traditional academic freedom and may decrease real diversity among postsecondary educational institutions that define their educational missions differently. For example, there is evidence that CHE has threatened to remove the accreditation of Westminster Theological Seminary if it does not include a woman on its governing board. Such action raises serious questions regarding religious as well as academic freedom.

While as a voluntary private association CHE may wish to promote various social goals or agendas as it sees fit, the federal recognition role is subject to additional considerations. As mentioned earlier, the accreditation decisions of Department-recognized accrediting agencies have serious consequences under federal law for institutions and students. For that reason, the Department must be careful not to sanction coercive restrictions on traditional academic independence through the departmental recognition process.

Certain testimony in support of CHE's petition suggests that CHE may consider its diversity standards as efforts to remedy discrimination. This Department has been charged by Congress with, and is firmly committed to, enforcing the civil rights statutes applicable to recipients of federal education monies. But a private association like CHE is not the appropriate body to make findings of discrimination and fashion appropriate remedies under these statutes. See Regents of the University of California v. Bakke, 438 U.S. 265, 307-09 (1978) (Powell, J.). Indeed, CHE's prescription and application of its diversity standards could conceivably cause violations of federal civil rights laws by, for example, leading to race-based hiring quotas at educational institutions receiving federal funds.

The Recognition Regulations

Based on a review of the record, there appear to be open questions as to whether CHE's diversity standards satisfy the following four requirements of the Department's recognition regulations: (1) that prior to their application, such standards or criteria are clearly described in publicly available and current written material, 34 C.F.R. 602.13(d); (2) that CHE's diversity standards, diversity evaluation methods, and diversity-based decisions are accepted as appropriate for accreditation decisions by educators and educational institutions, 34 C.F.R. 602.14(a); (3) that such standards, methods and decisions are accepted as appropriate by other recognized accrediting agencies, 34 C.F.R. 602.14(c); and (4) that CHE maintains effective controls against inconsistent application of such standards or criteria, 34 C.F.R. 602.16(g).

Further, the submissions from a professor at Baruch College raise a question about whether CHE maintains effective controls against conflicts of interest by members of evaluation teams, 34 C.F.R. 602.16(g).

The Remand

CHE and other interested parties should have ample opportunity to address my concerns about the application of CHE's diversity standards. Moreover, before I reach any final decision on CHE's petition, I wish to receive the recommendations of the Advisory

Committee on matters within that Committee's expertise. That Committee at its Fall 1990 meeting voted to defer making a recommendation on CHE's petition because of many of those same concerns about CHE's diversity standards. Accordingly, I am deferring a decision on CHE's petition for renewal of recognition and remanding this matter to the Advisory Committee. And I am hereby requesting the Advisory Committee, at its Fall 1991 meeting, to examine the issue of whether CHE's diversity standards, as stated, interpreted and applied by CHE, affect the reliability of CHE's accreditation decisions as authoritative indicators of the quality of training and education offered by the postsecondary institutions within the scope of CHE's petition for recognition. I specifically request the Advisory Committee to examine whether CHE has applied its diversity standards so as to infringe traditional institutional autonomy, and to address the issues identified above regarding compliance with the Department's recognition regulations.

Additional Evidence

CHE and other interested parties are invited to submit supplemental material addressing all the above issues. For example, CHE should further address the meaning, function, rationale and application of its diversity standards. The Department's record on CHE's actions regarding Baruch College is incomplete, and that subject should be addressed by CHE. If CHE has anything more to add to the record on CHE's actions regarding Westminster Theological Seminary, it should do so. Other past and current applications of the diversity standard should also be explained and, to the extent possible, adequately documented. To facilitate this process, the Department's staff is instructed to contact CHE to arrange for review of relevant records at CHE's offices.

To allow adequate time for review by the Advisory Committee and by the Department, CHE and any other interested parties should submit any additional written materials on CHE's renewal petition to the Accrediting Agency Evaluation Branch, Office of Postsecondary Education, by July 31, 1991.

Lamar Alexander

Lamar Alexander

Mr. WEISS. In that letter from Secretary Cavazos, the Department announced formation of an internal task force to promote—the letter stated:

> President Bush and I and every member of this Administration seek a future for our children that is free from the deep personal hurt and injustice that discrimination leaves in its wake.
>
> I know you will join us in working to eliminate racial, ethnic, gender and religious discrimination on our campuses and in building a society that draws its strength from the vitality of its people.

You don't deny that letter was sent out?

Mr. ALEXANDER. I don't deny it. I agree with it. We don't believe the gatekeeper for the student grant or loan program ought to go to a Jewish theological seminary and tell them how many Presbyterians ought to be on their board.

Mr. WEISS. The task force on diversity was scheduled to meet January 22, 1991. Can you tell me why it didn't meet, and has not had any meetings since then?

Mr. ALEXANDER. I can't.

Mr. WEISS. Can anybody who is sitting here, or in the audience, from your staff, tell us that?

Mr. ALEXANDER. The reason I can't tell you that is, I wasn't the Secretary. Perhaps Dr. Sanders can.

Dr. SANDERS. Mr. Chairman, I cannot respond to that question. I do not know or recall why they did not meet.

Mr. WEISS. Mr. Williams, would you please step forward? You were sworn in. You are under oath.

Mr. WILLIAMS. Mr. Chairman, I have no information to provide as to why that meeting did not take place.

Mr. WEISS. Isn't it a fact that you discussed the January 22 meeting with Mr. Sanders, and he told you to cancel it, and gave you the impression that the task force was dead?

Mr. WILLIAMS. We had a discussion with regard to the Task Force on Racial Harassment. I was not directed to cancel any meeting for the Secretary.

Mr. WEISS. Did you have a discussion regarding the task force on diversity?

Mr. WILLIAMS. We had a discussion regarding a Task Force on Racial Harassment, not a task force on diversity. It was a task force the Secretary wanted on the area of racial harassment.

Mr. WEISS. What happened? What was the nature of that conversation.

Mr. WILLIAMS. Over a lunch discussion, there was concern about the number of people that would be invited, and who specifically would be invited. We never completed the list of invitees, and never formalized the meeting that was planned to take place.

Mr. WEISS. You were never told by Dr. Sanders to cancel it?

Mr. WILLIAMS. No, I was never instructed by Dr. Sanders to cancel a meeting.

Mr. WEISS. You didn't conduct the meeting. The meeting never took place.

Mr. WILLIAMS. Keep in mind, this was the Secretary's meeting. The Secretary never held the meeting.

Mr. WEISS. Secretary Alexander, would you agree, under the law, State and local governments establish and dictate educational standards?

Mr. ALEXANDER. No.

Mr. WEISS. You do not? Well, let me then quote you from 20 U.S.C. 3403(a). It says:

> It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs, and to strengthen and improve the control of such governments and institutions over their own educational programs and policies.
>
> The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

Do you disagree that, in fact, is what the law states?

Mr. ALEXANDER. No.

Mr. WEISS. Then I ask you again, would you agree, under the law, State and local governments establish and dictate educational standards, rather than the Federal Government handing down educational dictates?

Mr. ALEXANDER. No.

Mr. WEISS. Are you aware the law prohibits you from exercising any control over accrediting agencies?

Mr. ALEXANDER. No.

Mr. WEISS. Well, again, let me quote you 20 U.S.C. 3403(b)——

Mr. ALEXANDER. Mr. Chairman, the reason you are getting short answers is because you are asking me questions that are so broad that, having sworn under oath, I can't answer with any more detail. But, obviously——

Mr. WEISS. I am going to quote the law to you.

Mr. ALEXANDER. Mr. Chairman, obviously State and local governments have almost all the education-setting authority, but in some cases, the Federal Government has overriden that.

Mr. WEISS. I am quoting you sections of the law which, in fact, apparently you are unaware of.

Mr. ALEXANDER. I think you just agreed with me, Mr. Chairman—yes, in some cases, the Federal Government has overriden the State and local——

Mr. WEISS. My concern is that the Department has overriden Federal law. 20 U.S.C. 3403(b):

> No provision of a program administered by the Secretary or any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over . . . any accrediting agency or association.

Do you deny that in fact is a statement of the law?

Mr. ALEXANDER. No, Mr. Chairman, I don't deny it, if you are reading the law. But the law that your Congress, the Congress in which you served passed, directed the Secretary to determine what are reliable authorities for determining the qualities of the educational institutions that students with college grants and loans attend.

And it sets out some very specific provisions under which the Secretary does that, gives the Secretary the power to promulgate regulations. And I am operating under—if I may finish my

answer—I am operating under that law and those regulations. And I don't know anyone that has challenged the validity of the law the Congress has passed——

Mr. WEISS. I know of no Federal law which permits you to set standards, and, as a matter of fact, you know—and I am sure you are aware of this—there is a long, long, continuing history of the States and localities jealously guarding, and Congress reassuring that their concerns are addressed and that their rights are jealously guarded as to who makes education policy.

Every time, the Congress has come down on the side of the States and localities. That is why in this instance, it is spelled out specifically, you are to keep your hands off the supervision or control of any accrediting association.

Mr. ALEXANDER. Mr. Chairman, if I may respond to that, I am delighted to hear your eloquent defense of States' rights. Second, I might say, if I kept my hands, as Secretary, off the process of determining whether the accreditation process worked well as the gatekeeper for the appropriate spending of Federal money, which amounts to $12 billion a year, I believe you would have me up here every day.

Most of the congressional committees right now are complaining we are not being tough enough in terms of asking the accrediting agencies to work on the quality of colleges and universities, and so that is a very aggressive role by the Secretary working with the accrediting agencies, which they do not have to participate in if they do not wish to.

Mr. WEISS. What you are doing, though, is taking a very clear explicitly stated legislative mandate as to your lack of any authority over supervision or control of any accrediting agency, and simply disregarding that because of your definition of what your rights are.

I remind you, in fact, that it is Congress in passing legislation that determines what your authority is, it is not you who can make that determination yourself.

Mr. ALEXANDER. Mr. Chairman, I respect you, I respect the Congress, and I totally agree with you. And I am acting precisely under the authority the Congress gave the Secretary.

Mr. WEISS. Absolutely not.

Mr. ALEXANDER. Well, we have an obvious difference of opinion.

Mr. WEISS. You bet.

Now, Assistant Secretary Haynes understood the law. He advised the Secretary's office it could not set standards for Middle States or any other accrediting agency. His January 28 memorandum advised that "The responsibility of the Secretary is to recognize accrediting agencies that can attest to the quality of education provided by their membership. It is not within the scope of the Secretary's recognition process to frame an agency's standards."

That advice came from the office and official specifically charged with enforcing the Department's regulations and Federal law. Have any laws passed since Dr. Haynes' memorandum was written to render his advice incorrect?

Mr. ALEXANDER. No, Mr. Chairman, the Assistant Secretary is not charged by the Congress with the responsibility of this, the Sec-

retary is. If we are going to let the Assistant Secretary make the decisions we don't need a cabinet.

Mr. WEISS. The Department's own Office of General Counsel was asked to review the decision on Middle States. An attorney in that office concluded legislative history "suggests that he Government was supposed to take note of existing accrediting activities rather than to regulate those activities."

Are you aware of this opinion from the Office of General Counsel?

Mr. ALEXANDER. This opinion?

Mr. WEISS. Yes.

Mr. ALEXANDER. Which opinion?

Mr. WEISS. The opinion which an attorney in the office——

Mr. ALEXANDER. May I see it, please?

Mr. WEISS. You bet.

Mr. ALEXANDER. If the point is that there were others in the Department who thought the decision made could have been made a different way, yes. It was my decision. I take full responsibility for it. I think I am right. There are others who think I am wrong—I will stipulate to that.

Mr. WEISS. This is the memo from Harold Jenkins, dated March 21, 1991.

Mr. ALEXANDER. Thank you.

Now, what was the question, Mr. Chairman, about this memorandum?

Mr. WEISS. An attorney in that office, the person who wrote that memo, concluded the legislative history, "suggests the Government was supposed to take note of existing accrediting activities rather than to regulate those activities."

I asked if you were aware of this opinion.

Mr. ALEXANDER. If I was aware of this opinion. I think, Mr. Chairman, I was not. I don't believe I saw this until I was preparing for my testimony today.

I can't be sure of that, but I considered a variety of points of view and came to a decision which was I wondered why it was the business of a private accrediting association to tell a seminary how many women it should have on its board, or a black college how many white people there should be on its board, or a Jewish seminary how many Presbyterians should be on its faculty.

Mr. WEISS. That memo also concluded, "The approach taken assumes that the Department of Education may focus on matters not included in the regulatory criteria in assessing an agency's capacity to evaluate educational quality. As a legal matter, this assumption is subject to question."

Do you disagree with that conclusion, as well?

Mr. ALEXANDER. Well, let me look at it just a moment. The approach taken assumes—you are asking me to consider a memorandum I have never considered before, so I will have to think about it carefully.

Mr. WEISS. Well, while you are thinking, the reason we are asking you these questions——

Mr. ALEXANDER. I can't listen and think at the same time, Mr. Chairman.

The approach taken assumes the Department may focus on matters not included in the regulatory criteria in assessing an agency—I am not sure what this means.

It says in the next sentence the assumption is subject to question. Most lawyers say that about anything.

I thought I was clearly within my prerogatives in inquiring.

Mr. WEISS. You just have come in to the office. Here are people who have been charged with the responsibility for overseeing and making determinations on what the law is. They make recommendations what the law is and you say, "no, they can't make that decision. I am going to make the decision because I have questions."

Mr. ALEXANDER. Mr. Chairman, that is precisely right. I may have just come into the office, but I didn't come in from the rain. I was chairman of the University of Tennessee for 8 years. I was a practicing lawyer, as you were. I considered the pros and cons.

I make numerous decisions every day, and I considered on the whole the Secretary had a right to inquire whether the Middle States Association, for example, was focusing on educational effectiveness appropriately. That is one of the provisions of the regulation under the congressional law. When the Middle States Association was making decisions consistent with its own standards, and I also thought it was appropriate for me to consider whether decisions and the questions that Middle States was raising were generally agreed with throughout the United States by other educators and educational institutions, which is another specific regulation, so there are three specific regulations under the congressional law that gives me the responsibility to make these sorts of decisions.

I thought that was an appropriate decision to make, and I hope it was a correct one.

Mr. WEISS. I don't think it was correct. I don't think you had the authority.

Isn't it also true that the Department has already recognized other accrediting agencies with diversity standards similar to those of Middle States?

Mr. ALEXANDER. That is possible, Mr. Chairman.

I think it—I am not sure of that. I think the only regional accrediting agency which has a diversity standard of that sort is the Western Association, and it may have had that standard when it was last recognized. There are a number of other associations, like the one concerning journalism, who don't have the same life or death sword over an entire institution. They do not have the ability by their failure to accredit to cut off the institution's ability to take students with grants and loans. I think that is quite different.

Even if other decisions had been made before I became the Secretary, I was presented with an issue. I thought the issue was important, and I did not—I wondered why it was the job of the gatekeeper——

Mr. WEISS. You said that already.

Mr. ALEXANDER. I want to keep focusing on that. I made my decision and I stick with it and I trust and hope I have made it appropriately and wisely.

Mr. WEISS. Well, according to that memorandum that we showed you that you have before you, Mr. Jenkins states, "OPE indicates one or more accrediting agencies with diversity standards similar

to Middle States has recently been recognized by the Department of Education."

The Department of Education had attempted to exert control over accrediting agencies before. In 1987, former Secretary Bennett attempted to add criteria to the Department's regulations to require accrediting agencies to have standards for program effectiveness.

The requirement was deleted from the final revised criteria because it was against the law. Were you aware of that attempt?

Mr. ALEXANDER. No, I was not. That sounds interesting. What was the proposal, to increase educational effectiveness over accrediting institutions?

Mr. WEISS. To have standards for program effectiveness. Mr. Bennett tried to do that.

Mr. ALEXANDER. Sounds like a pretty good idea.

I would have thought that might be exactly what an accrediting agency ought to be doing. Focus on educational effectiveness is one of the criteria we use.

What we want to know is what is the quality of this institution.

Mr. WEISS. The law I quoted before specifically tells the department to keep its hands off supervision, regulation, control, substance of accrediting agencies. And, again, you seem to think because you came in with a fresh idea of how can they do this to a religious organization, that that, in fact, overrules what the intent of Congress clearly states it is.

I don't understand that.

Mr. ALEXANDER. We disagree. Maybe we can talk more about it.

Mr. WEISS. The requirement for educational standards was deleted from the final revised regulations because of "commenter's" concerns about the limits of the Secretary's authority. Were you aware most of the comments responding to the revised criteria criticized the attempt to revise a standard because they felt the Secretary was specifically prohibited by law from setting standards?

Mr. ALEXANDER. That is a long question.

In 1987 I was in Australia, Mr. Chairman. I was not aware of the process.

Mr. WEISS. I am trying to bring you some historical perspective about how the law was interpreted.

Mr. ALEXANDER. I think I have interpreted the law consistently, Mr. Chairman. If accrediting agencies want to look at their own version of diversity and impose it on other colleges and universities, that does not cause me any concern. What causes me concern, the reason I raise questions is whether we ought to lend them this big weapon, which, in effect, forces colleges and universities to use a single accrediting agency, which serves up for them their version of cultural diversity.

If we did not use accrediting agencies, the accrediting agencies could go about their business, they could invent all their ideas about diversity they would like to, and we could accredit colleges and universities—we could decide in some other way whether a college or university was of reliable quality so we could spend taxpayers' money there for student grants and loans.

Mr. WEISS. We have tried to keep the Federal Government from becoming big brother in the field of education, and all of a sudden that seems to be what we are getting.

Mr. ALEXANDER. Mr. Chairman, with all respect, I think quite the contrary is true. I think when we loan the Federal purse to a private agency so they can tell Jewish theological seminaries how many Presbyterians they need on their board, I think that is interference. I don't think the people in Tennessee telling Fisk University or historically black colleges how many people of other races are on their boards. As long as the constitution is observed, the question I have, what business is it of the private accrediting agency.

Mr. WEISS. The question is what business is it of yours. In Middle States, they worked out their problems.

Mr. ALEXANDER. They worked out their problems the way people did in the Soviet Union and Eastern Europe. The accrediting agencies stood there and said if you don't work it out, you will have to close.

Mr. WEISS. Did they put a woman on the board?

Mr. ALEXANDER. I am not sure. They were mightily protesting and my sense of the Westminster case was basically the accrediting agency was asking them to change their religious beliefs in order to become accredited so their students could arrive with Federal grants and loans. And the Westminster theological seminary objected strongly to that, which it seems to me in America is their right to do.

It would seem to me if we are for diversity, we would be for more diverse colleges and universities, not cookie cutter models all the same.

Mr. WEISS. Let me at this point yield to our distinguished colleague from New Jersey, Mr. Payne.

Mr. Payne, if you have any opening comments as well I welcome them at this point.

Mr. PAYNE. Thank you very much, Mr. Chairman.

I won't make an opening comment since I understand the Secretary will have to be leaving.

I am sorry I missed the testimony here, but I did hear several times something that keeps coming up, and I was trying to get an idea what the rationale was for this new ruling. The thing that comes up the most, I think you mentioned about seven times since I have been here, is your main concern is that Jewish institutions cannot get a Presbyterian on the board. Is that your main concern about diversity?

Mr. ALEXANDER. Or my question—my question is should a private accrediting agency tell Howard University and Fisk, or any other historically black college, how many white members should be on the board?

Mr. PAYNE. That has never been a problem. As you know, Ms. Bush is on the board at the Moorehouse School of Medicine——

Mr. ALEXANDER. Do you think it is the responsibility for a private accrediting agency to tell Howard University——

Mr. PAYNE. You don't usually tell people something they are already doing. I think that is not a good example.

Let me get to another point. Regarding your statement on the Middle Atlantic States, you are saying that, anyone who uses diversity as a criterion shall not be recognized. So thereby——

Mr. ALEXANDER. No, Mr. Payne, I said nothing that remotely resembled that.

Mr. PAYNE. I wasn't here. I have just been listening to your responses. Do you want diversity to be included.

Mr. ALEXANDER. Mr. Payne, I value—to me, diversity means variety. It means a culture of many different backgrounds. I want it for myself, for my children, for all Americans. When I was president of a university, I worked hard to see that we had it. I think our constitution requires civil rights and that Congress has passed laws on the subject and we have Federal agencies busy enforcing those laws. My question is, is it the business of the accrediting agency to take its version of diversity and impose it on more than 3,000 colleges and universities. That is my question.

Mr. PAYNE. All right. Then tell me what their interpretation of diversity is so I can understand why you don't like it.

Mr. ALEXANDER. Well, the reason what I didn't like about what I heard was the idea of instructing a religious seminary that did not ordain women and didn't permit women to serve—and only permitted ministers to serve on the board telling them they then had to permit a woman to serve on the board which was contrary to religious beliefs.

I also wondered about telling Baruch College that 18 percent minority faculty was not enough when we only graduate about 3½ percent black faculty every year, which is deplorably low, but it seemed to me Baruch College is being singled out for some reason.

That led me to wonder whether the private agency could go further in the kind of examples we have. We have many colleges and universities like Julliard, Hostest Community College in New York, Union Theological Seminary that have a religious or cultural or even a racial focus and in the past we have not had accrediting agencies tell them just what the racial mix ought to be on their board or in their student body.

Mr. PAYNE. They are just encouraging, not requiring, cultural, ethnic, and gender diversity.

Mr. ALEXANDER. That was my question. It looked like they were saying specifically 18 percent is not enough at Baruch and you have to put a woman on the board at Westminster Theological Seminary. That looked like a very specific requirement. A conflict——

Mr. PAYNE. Let me just ask you how long has this diversity been one of the criteria for accreditation?

Mr. ALEXANDER. As I understand it, it was adopted in 1988 by the Middle States Association.

Mr. PAYNE. Do you think there has been, for example—well, I don't want to take where you went to school, but say——

Mr. ALEXANDER. That is all right. I went to New York University in Mr. Weiss' district.

Mr. PAYNE. I thought you went to Vanderbilt.

Mr. ALEXANDER. I went to both.

Mr. PAYNE. I thought you would have mentioned Vanderbilt first.

Mr. ALEXANDER. But my chairman went to New York University. I am that smart.

Mr. PAYNE. All right. I want to get to the point. As you know, in 1954 there was the case of *Brown* v. *Topeka Board of Education*. It was some other body that had to prod the educational institutions to become more diverse. We find that there seems to be a lot of need to prod for diversity in different areas if we take a look at the landscape of this country where minorities, women, and handicapped people have been traditionally excluded. I am just trying to get in my mind if you feel that diversity as a criterion is wrong or diversity as a criterion by someone other than you is wrong or not acceptable.

Mr. ALEXANDER. Mr. Payne, to use the example you asked about, I was a student in Vanderbilt in 1961 and 1962. 1961 and 1962, John Lewis was on the streets of Nashville, on the streets of Knoxville. He didn't have a place to go to the bathroom.

He didn't have a place to eat. He was trying to change the customs and the laws. In a very small way, I was at the university, editor of the newspaper. I was arguing strongly we ought to open the university up, which was then closed to blacks, open it up to people of all races and the student body voted on it and it was voted down in a private university in 1962. I felt very strongly about that then; I feel very strongly about it now.

I was the first southern Governor to endorse the Voting Rights Act. I have tried to introduce more variety into our institutions because I think that is good and healthy, but I don't think I need a private accreditation agency telling me how to do it as a university president. That is my only objection.

These are terribly important issues.

Mr. PAYNE. Mr. Secretary, who is going to do it? You admitted there has been a need. I spent 1½ hours with the President yesterday and I talked about this program for the year 2000, picking the top school districts in the country to have a special program and then I talked about why not take the 75 poorest and let's try to do the same program there, see if we can bring them up to that excellence level and we talked about education and a number of things and I just wonder—and he said he is for all these things.

As I asked Mr. Williams before, 3 months ago, he seems to be interested in, as he says, trying to promote diversity. Was this done in concert with the White House, Mr. Sununu, Mr. Bush, this knocking out of diversity?

Mr. ALEXANDER. The answer to that is no, I didn't discuss it with the White House. We are not knocking out diversity; we think diversity is terribly important.

Mr. PAYNE. Who is going to call it, you?

Mr. ALEXANDER. No.

Mr. PAYNE. Aren't you saying an agency that used diversity in the future should not be used for accreditation, period?

Mr. ALEXANDER. No. What I am asking, I have not made a decision in this case. I have asked more facts be gathered.

Mr. PAYNE. The handwriting is on the wall.

Mr. ALEXANDER. I have asked more facts be gathered and I asked for a chance to make a decision. The people who obviously now should make the decision are the U.S. Department of Justice and

various Federal agencies who are charged by Congress of enforcing the Civil Rights Act of 1964, 1972, and a variety of other laws.

They are busy doing that, including in our Department.

The problem here seemed to me was like asking the fire inspector—hiring a fire inspector and he starts telling you how to cook. What we need for accrediting agencies to do is focus on the quality of colleges and universities. What they seem to also be saying they want to do is to impose one version of diversity and, in fact, I think lessen diversity among our colleges and universities.

That is the question we are asking.

Mr. PAYNE. We have to vote.

Mr. WEISS. Mr. Payne, we have to go vote.

Mr. Secretary, we have more questions for you. I understand your schedule requirements. We will have to take a recess for 10 to 15 minutes and then we will come back and continue. If you can come back, fine. If not, we will try to see if we can get the questions to your staff people, although some of them, I think will be dealing with the specific events around the National Advisory Committee's action, but we have no choice at this point because of the vote on the floor except to recess for about 15 minutes at the most, and so we will play it whichever way you can fit it into your schedule.

Mr. ALEXANDER. Mr. Weiss, thank you for your courtesy. What I would like to request of the committee, I am host to a meeting which begins at noon and I would like to ask if the other staff members of the Department could stay and see if they can answer as many of the questions as possible.

If you have further questions of me, I will certainly be glad to answer them in writing. If you want to talk to me personally about that, I will be glad to talk to you personally.

Mr. WEISS. I thank you very much. It may be if they take the position "I don't know; I wasn't there," that, in fact, we will have to ask you to come back at a time convenient to you and to us.

At this point with our appreciation, we excuse you. We hope Mr. Williams, Mr. Childers and Dr. Sanders and the other people will stand by. The subcommittee stands in recess for about 10, 15 minutes.

[Recess taken.]

Mr. WEISS. The subcommittee is now back in session.

I thank you, gentlemen, for standing by. We don't know when the next interruption will come for a vote.

Mr. Childers, on November 13, 1990, the National Advisory Committee on Accreditation and Institutional Eligibility met to consider 27 petitions for recognition from accrediting agencies. Where did the committee meet?

Mr. CHILDERS. It met at a hotel in suburban Virginia, whose name I can't remember at the moment.

Mr. WEISS. That is all right.

Mr. CHILDERS. Sheraton National, I am reminded.

Mr. WEISS. Thank you.

On that day the committee voted to approve the petition of the Middle States Association, but the very next day a member of the committee, Dr. Richard Kunkel, who already voted to approve the Middle States petition, asked that the vote be reconsidered. The

committee then reversed itself and denied the petition by a two vote majority.

Were any of the witnesses here today or in the audience in attendance at the meetings or did they meet with any members of the advisory committee between November 13 and November 15?

Mr. CHILDERS. Well, I was there the entire time of the advisory committee meeting at the Sheraton National Hotel. I don't believe either of the other two witnesses were there.

Dr. SANDERS. That is not correct, Mr. Chairman. I was present. As I recall, the committee came in for a preliminary session on Veterans' Day, which was a holiday. Staff had invited me out to the meeting to give an opening set of remarks, a charge to the committee, if you please, as well as to swear in new members.

I was present for a part of the advisory committee's, not their formal meeting, but the preliminary session to their meeting, and did interact with many of the advisory committee members.

Mr. WEISS. When you say that you interacted with them, what was the nature of that interaction?

Dr. SANDERS. As I said, Mr. Chairman, I was present. I swore in the new members. I gave a set of brief remarks and interacted formally with the members of the committee.

I stayed after the close of the session that evening and visited with a number of the staff and committee members there at the hotel and then had dinner with a couple of the people who were on the advisory committee who are personal friends.

Mr. WEISS. Did you have occasion to discuss with any of the committee members the vote that had been just taken?

Dr. SANDERS. I don't recall, Mr. Chairman, whether or not I had occasion to talk with members of the committee about this particular vote or not. That very well may be true, because I saw Richard Kunkel for 5 or 6 minutes at a dinner on Tuesday evening that was centered around the release of a mutual friend's book.

Mr. WEISS. And did you talk with Dr. Kunkel about the vote?

Dr. SANDERS. It is very possible that Dr. Kunkel informed me that the vote had taken place that evening. I am not certain. I am assuming that probably he did.

Mr. WEISS. And did you discuss with him or anyone else the reconsideration of that vote the following day?

Dr. SANDERS. Richard Kunkel called me the morning of the next day and asked me the procedure for moving for reconsideration. That was the extent of the conversation, Mr. Chairman.

Mr. WEISS. And you gave him the information as to how to do it; yes?

Dr. SANDERS. I told him what Robert's Rules of Order generally said about a motion for reconsideration.

Mr. WEISS. Did you ask him why he was inquiring about that?

Dr. SANDERS. I don't believe I did, Mr. Chairman.

He may very well have told me why he was moving for reconsideration; I assume he probably did.

Mr. WEISS. Now, Mr. Childers, did you have any conversation with any of the members of the committee on the vote that had taken place?

Mr. CHILDERS. I was with all the members that were there for the 3 or 4 days of the meeting, so I was rather constantly in touch with them during that whole period of time.

Mr. WEISS. Specifically, did you have a conversation with Dr. Kunkel or anyone else after the first vote had been taken?

Mr. CHILDERS. On the following morning—actually when I arrived the following morning, I was met by the chairman who was State Senator Phillips from Georgia, and my staff, who told me at that time that Dr. Kunkel was planning to move for reconsideration of the Middle States vote later that day. That is the first I had heard of it.

I had had no conversation with him or anybody else prior to arriving at the meeting the second morning.

Mr. WEISS. Did you then have a conversation with Dr. Kunkel as to why he was going to be making that effort?

Mr. CHILDERS. He came up; a group of us were standing there. He said he had further questions from the day before that he wanted to raise and was going to move to reconsider. We then had a short discussion of how you do that, the move to reconsider.

Chairman Phillips said that that appeared all right to him and that he would allow Dr. Kunkel to make that motion later in the day.

Mr. WEISS. Were you involved in the review of the Middle States petition for?

Mr. CHILDERS. Yes.

Mr. WEISS. And do you have direct knowledge, or did anyone tell you that an official from the Department of Education contacted a member of the advisory committee to discuss Middle States petition after that first vote?

Mr. CHILDERS. No.

Mr. WEISS. Did any employees of the Department express their opposition to the Middle States standard to any members of the advisory committee in any way that you are aware of?

Mr. CHILDERS. Not to my knowledge.

Mr. WEISS. Did you at any time have discussions with people where you stated you believed an official of the Department of Education discussed the diversity standard with a member of the advisory committee?

Mr. CHILDERS. I have no knowledge of any such discussions.

Mr. WEISS. You have no knowledge?

Mr. CHILDERS. I don't know. Are you asking about that particular, during the meeting?

I do not know of discussions that were held about changing the Middle States vote.

Mr. WEISS. Did you at any time have discussions with people where you stated that you believed an official of the Department of Education discussed the diversity standard with a member of the advisory committee?

Mr. CHILDERS. I don't know.

I don't recall any such discussion.

Mr. WEISS. Dr. Sanders, you said you know Dr. Richard Kunkel; yes?

Dr. SANDERS. I know Dr. Kunkel and several of the members of the advisory committee. They are both former professional colleagues and friends.

Mr. WEISS. Right. What is the extent of your relationship with Dr. Kunkel?

How far back does it go? How do you know each other?

Dr. SANDERS. It dates back, Mr. Chairman, to 1979, when I was State superintendent of education in the State of Nevada, and Richard Kunkel was the dean of education at the University of Nevada, Las Vegas, and has continued across the years in a variety of ways. We served together, I as a member of the board of education, and he as the executive director of one of the national accrediting bodies.

We also happen to be personal friends growing out of that association.

Mr. WEISS. Did you discuss the Middle States diversity standard with Dr. Kunkel at any time after November 13, 1990, right up until today?

Dr. SANDERS. I very well may have discussed it with him on a number of occasions.

Mr. WEISS. When was the first time that you would have discussed it with him, to your recollection?

Dr. SANDERS. As I told you earlier, I assumed that he probably told me the evening that we encountered one another at dinner, the evening of the first day of the committee's meetings.

I am certain that he told me generally what the advisory committee had done that day. That would have been typical to our relationship.

Mr. WEISS. Did you at any time suggest your opposition to the diversity standard to Dr. Kunkel?

Dr. SANDERS. I very well may have stated my opinion. I did not try to influence his opinion.

In fact, interestingly enough, Mr. Chairman, I probably had like conversation with other members of the advisory committee, specifically Rose Owen, who happens to be a friend of mine and who happened to lead the other point of view during the debate with Richard Kunkel.

Mr. WEISS. What is your opinion on the diversity standard?

Dr. SANDERS. I don't know that I have arrived to a final opinion on the diversity standard itself, Mr. Chairman.

I do believe, based upon my review of the record, that there were problems that merited accepting the advisory committee's recommendations that action be deferred on their accreditation until additional information could be collected and selected questions answered, specifically as to the requirement that an accreditation agency share any new standard that it is contemplating, both with its member institutions, so that they have ample opportunity to comment, to debate the appropriateness of such a standard and, likewise, to share any such new standards that are contemplated with other accrediting bodies so that they might likewise comment and debate the appropriateness of such a standard.

That was a problem that the advisory committee saw. It was a problem that had been pointed out earlier by staff and referenced earlier in the testimony here today by Mr. Childers.

Likewise, there were questions about how conflicts of interest were handled by Middle States. I believe that those issues, those questions were sufficient to support the advisory council's recommendations to the Secretary.

I so noted in my note to the Secretary recommending that he accept their recommendation to him.

Mr. WEISS. Their recommendation after the second vote; is that right?

Dr. SANDERS. That became their recommendation, Mr. Chairman. That is the recommendation to which I referred.

Mr. WEISS. Did you express your opinion as you just described it regarding diversity to Dr. Kunkel between the end of the vote on the, on November 13 and before the second vote took place on the 14th?

Dr. SANDERS. No, Mr. Chairman, I did not.

Mr. WEISS. Why are you so certain of that?

Dr. SANDERS. I heard from Dr. Kunkel, by my recollection, whenever he called me on Wednesday morning as to, in general, his reasons for wanting to move for reconsideration.

What he relayed to me is that this matter had troubled him through the evening, that he had spent considerable time through the night thinking about it, and he wanted to see the vote reconsidered and asked me was that possible, was there a mechanism for doing that.

Mr. WEISS. Dr. Sanders, are you familiar with the Federal Advisory Committee Act?

Dr. SANDERS. Yes, Mr. Chairman. I am aware of the Federal Advisory Committee Act.

Mr. WEISS. Are you aware that the act requires that, "the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment."

You violated that act by discussing matters pending before the committee with Dr. Kunkel. How do you explain that?

Dr. SANDERS. Mr. Chairman, I did not interfere with as you intimate with the deliberations of the advisory committee or attempt to influence Dr. Kunkel's position. The committee is an advisory committee.

An exchange of opinions and a question as to whether or not it is possible to reconsider an action initiated by Dr. Kunkel, I think, hardly constitutes my interfering with him as an advisory committee member.

Mr. WEISS. The Secretary in his April 11 discussion on Middle States, concluded that, "Its diversity standards could conceivably cause violations of Federal civil rights law by, for example, leading to the race-based hiring quotas at educational institutions receiving Federal funds."

He cited language from the diversity standards found in pages 125 and 32 of the Middle States standards. On page 1, the standard states, "An institution must have a governing board which includes membership broadly representative of the public interest and reflecting the student constituency." Is that the language that the Secretary referred to that violates civil rights law?

Dr. SANDERS. Mr. Chairman, I do not and cannot personally speak to the answer to that question. I would assume the Secretary would have to respond to exactly what he was referring to in his decision.

Mr. WEISS. He cited on page 25 of the standards, he cited that page which contains the following language. "Steps must also be taken to achieve appropriate diversity of race, ethnicity, gender and age in faculty ranks." Does that language violate the civil rights law, in your view?

Dr. SANDERS. Mr. Chairman, I am not an attorney. I am not sure I am qualified to determine whether or not that language violates the law.

Mr. WEISS. Mr. Williams, is it your opinion that the language on page 25 of the standards which says, "Steps must also be taken to achieve appropriate diversity of race, ethnicity, gender of age in faculty ranks," violates the civil rights laws?

Mr. WILLIAMS. Mr. Chairman, not having been involved in the Middle States matter at all, this is my first official occasion to look at any of these materials. I am at this point not in a position to draw a legal opinion as to whether that would be violative of Federal civil rights laws.

I think it would probably be a tad bit hasty for me to attempt to provide you a legal opinion at this moment.

Mr. WEISS. Would you for the record tell us what your title is?

Mr. WILLIAMS. I am the Assistant Secretary for Civil Rights, U.S. Department of Education.

Mr. WEISS. Thank you.

The Secretary also cited page 32 of the standards which states, "Members of the board should represent different points of view, interests and experiences, as well as diversity in age, race, ethnicity and gender."

Dr. Sanders, Mr. Williams, do you believe that that language violates civil rights laws.

Dr. SANDERS. Mr. Chairman, my answer to that question would be the same as before. I am not an attorney, I don't know, I am not sure that I am qualified to answer that question.

Mr. WEISS. Mr. Williams.

Mr. WILLIAMS. At the same time, Mr. Chairman, it would I think be a tad bit hasty for me to try to draw a legal opinion with having looked at this for only a matter of seconds.

Mr. WEISS. Writing for the majority in the *Bakke* decision, Justice Powell said, "A diverse student body clearly is a constitutionally permissible goal for an institution of higher education."

Dr. Sanders, Mr. Williams, do you disagree with the court's decision in *Bakke*?

Dr. SANDERS. I do not, Mr. Chairman.

Mr. WILLIAMS. I have no reason to disagree with the opinion.

Mr. WEISS. A memorandum from the Department's Office for Civil rights declares that, "OCR accepts diversity as a permissible basis for an affirmative action program."

The memorandum states "In OCR's view, permissible affirmative action programs may result in disparate admit rates, and may have an adverse impact on non-minority students."

Is that policy still in effect, Mr. Williams?

Mr. WILLIAMS. Mr. Chairman, could you please refer me to the document you are reading from?

Mr. WEISS. Yes. It is a documented dated September 7, 1990. It is the critique of OCR investigative procedures for university admissions, affirmative action programs.

On the first page—the author is Fred Chiofee, Acting Director of Policy and Enforcement Service. It is a note addressed to a person named Dick Comer.

Mr. WILLIAMS. As the document relates to the use of, to the attempt to provide diversity on campuses, and that to do so may result in some kind of statistical differences that is indeed still the policy of the office.

Mr. WEISS. It is the policy of the office?

Mr. WILLIAMS. That reflects the policy of the office at the current time.

Mr. WEISS. Not long ago the Department contended that minority preference scholarships are illegal. How would you feel about a school with an admissions policy that gave preference to the children of alumni and athletes but not minorities, Dr. Sanders?

Dr. SANDERS. Would you please—give preference to?

Mr. WEISS. Not long ago the Department contended minority preference scholarships were illegal. My question to you and ultimately to the Secretary would be how would you feel about a school with an admissions policy that gave preference to the children of alumni and athletes but not minorities?

Dr. SANDERS. First of all, I would want to know much more than just a broad statement. I would want to know particulars and I would want to hear advice from both counsel and the Assistant Secretary for the Office of Civil Rights before I would respond to such a question.

Mr. WEISS. Well, in October 1990, the Office for Civil Rights completed an investigation of Harvard University which found that Harvard's admission policy gave preference to children of alumni and athletes while your normal rate of Asian Americans was significantly lower of white Americans.

The Office of Civil Rights found Harvard's admission policy was conclusion. In reaching that conclusion the office found current case law, "Suggest if schools are to possess a desirable diversity, officials must retain wide discretion with respect to the manner of selecting students. The courts generally have been reluctant if not willing are to to dictate what considerations of methods of selection are to be given priority in college admissions."

Those are the Department's findings; is that correct?

Dr. SANDERS. As best I know, Mr. Chairman, that is correct.

Mr. WEISS. Mr. Williams.

Mr. WILLIAMS. That is correct.

Mr. WEISS. You agree schools are allowed to diversify at their discretion. Isn't it also true schools do not have the discretion to be segregated.

They can diversify by including various races but no segregated by excluding minorities; is that correct?

Mr. WILLIAMS. That is a little broader than what I think the reading of the law is. My reading of the law is based on the case you cited, the *Bakke* case. *Bakke* says that when trying to diversify,

the manner in which a school attempts to diversify is important. We must give each student in the prospective applicant pool an opportunity to compete for the available slots.

It does not, as I read *Bakke*, say schools can go about the business of attempting to balance their student bodies racially. So when talking about diversity, a very commendable goal which we all share and want, the court in *Bakke* outlined how we go about the business of attempting to diversify our campuses not radically balance them.

Mr. WEISS. Isn't it also true that in terms of prohibiting the Department's interference in educational standards, schools and accrediting agencies are treated equally under the law?

Dr. Sanders, Mr. Williams?

Dr. SANDERS. Mr. Chairman, I was somewhat perplexed during the earlier discussion between you and the Secretary about the relationship between the Secretary and accrediting authorities. And while your citation from the statute is entirely correct, I would also point you, though, to the Higher Education Act of 1965, and to section 1201, through which the Secretary of Education is required to publish a list of nationally recognized accrediting agencies and associations which he determines to be a reliable authority as to the quality of training offered by its member institutions.

Here we have, again, a voluntary relationship by voluntary organizations. If they wish to be recognized by the Secretary, they must petition and they must put forward their procedures, their standards and what have you for review, so that the Secretary may ultimately make a decision as to whether or not they are reliable authorities.

So, there is a relationship between the Secretary and accrediting associations. He cannot unilaterally impose his will upon them. But if they wish to be recognized by him, they must conform to what he deems is required for them to be such recognized authorities.

Mr. WEISS. Well, again, I have to quote to you 20 U.S.C. 3403, which states, "No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision or control over the curriculum, program of instruction, administration or personnel of any educational institution, school or system, over any accrediting agency or association, or over the selection or content of library resources, text books, or other instructional materials by an educational institution or school system except to the extent authorized by law." That is the law; isn't it?

Dr. SANDERS. If we took that statute on its face for what it says and used it exclusively, there would be no recognition process possible by the Secretary and, therefore, no ability for the Department to use accrediting authorities as one of the gatekeepers by which a school becomes eligible for Federal financial aid and become eligible for students to be able to redeem their Pell grants and to use their loans.

Mr. WEISS. The Congressional Research Service has stated that really the role of the Secretary and the Department over accredit-

ing agencies is really procedural rather than substantive. I don't know whether you would agree with that or not.

On the basis of your testimony you probably don't agree with it. The fact is what your role is to determine whether the accrediting agency has the physical capacity to, in fact, make judgments and to carry through examinations and inquiries about the particular institutions under its jurisdictions.

It is not, the role of the Secretary and the role of the Department is not to, in fact, determine what those standards shall be and to impose any such standards on the accrediting agency. The law is explicit on that.

Dr. SANDERS. There is more here than just whether or not such a standard is appropriate. As I mentioned to you earlier, and if you look to the record from the advisory committee or if you look to the decision of the Secretary, there are procedural questions in the case of Middle States that want the questions that have been raised and answers to those questions.

Mr. WEISS. I would ask of the Secretary, and I will ask of you, Dr. Sanders, would you agree that the United States has a history of discrimination against minorities, and the Department's of Justice and Education, the Congress and the courts helps where vestiges of discrimination exist they must be eliminated?

Dr. SANDERS. I would agree with that.

Mr. WEISS. In measuring the vestiges of discrimination, the Department had always used the disproportion between minority college enrollments as compared to the size of the minorities in a given local's population. The Department changed that policy.

Now you are only looking at the disproportion in the pool of applications for enrollment. Why is the Department looking at the disproportionate applicants instead of the overall population?

Dr. SANDERS. I cannot respond to questions about methodology. Perhaps, Mr. Williams can.

Mr. WILLIAMS. I am not sure what we are getting at here. I am not sure where you are saying there is a change and where the change has been.

Mr. WEISS. The change is that prior to this new policy, the determination as to whether discrimination took place, existed or not was based on the discrepancy, the disproportion between minority college enrollments as compared to the size of the minorities in a different local's population.

Now you are looking at only the disproportion in the pool of applications for enrollment; that is a change.

The question is why is the Department looking at the disproportion only at applicants instead of the overall population.

Mr. WILLIAMS. Mr. Chairman, in relationship to the way we conduct our reviews, we are still looking to determine whether discrimination existed against those persons who were applying for positions within the school. It is my understanding that is the way we have always conducted reviews.

At the Office for Civil Rights we have not changed the way we conduct investigations.

Mr. WEISS. The change in the way the Department measures discrimination changed in January 1990. It is contained in a memo-

randum for William Smith, the Acting Assistant Secretary for Civil Rights at that time. Are you aware of that?

Mr. WILLIAMS. As you are aware, I was not at the Department of Education in January.

Mr. WEISS. I assume you have the capacity to check Department records and to be up——

Mr. WILLIAMS. You asked me if I was aware of it. I was not at the Department. I am aware of the Department.

Mr. WEISS. Are you aware that, in fact, the change took as reflected in that memorandum?

Mr. WILLIAMS. It is still our position as, it has been for some time, that the Department when conducting investigations uses admissions as a guideline to determine if there has been discrimination against those persons who have applied for positions within the school.

Mr. WEISS. The Office for Civil Rights conducts two types of investigations. One is in response to complaints. The other is the compliance review which is self-initiated. Because the Department decides where and when to conduct compliance reviews, would it be fair to say, Mr. Williams, that the reviews are done on issues considered most important for addressing discrimination issues?

Mr. WILLIAMS. There are a number of variables used in determining which subject areas and schools will receive compliance reviews.

It is, indeed, correct that one of the variables is doing something in the areas that are most important. There are a number of other areas.

Those that we have not addressed over a period of time, we need to go back and see what is going on. That is also another variable.

Mr. WEISS. Among the compliance reviews being conducted by the Office for Civil Rights, are investigations of affirmative action programs at UCLA and the law school at California Berkeley. According to attorneys for both schools, the affirmative action plans were instituted because the percentages of blacks and Hispanic enrolled in the university system were far below that of whites and far below the representation in the state population.

Of all the discrimination issues we have in this country, why did you make it priority in investigating a program designed to correct what the State itself admits was a history of discrimination against blacks and Hispanics?

Mr. WILLIAMS. One of those reviews started off as a complaint by an individual citizen. During the course of conducting an investigation of that individual complaint, the investigators ran across, as I understand, evidence that suggested we look at the entire admissions process. As a consequence of that, we had to look at the special admissions process.

With regard to the other review, it came to the Department's attention, and as you are aware, when matters are brought to the Department's attention, there is a strong suggestion that we ought to look at them.That is the genesis of both of those reviews.

However, it would be incorrect to presume that there is a broadside attack by the Department, the Office of Civil Rights or by the administration on attempts to provide opportunities for minority

students to attend college. This country needs as many doctors, lawyers, engineers, and plumbers, that we can find.

College education is extremely important. But we in the Office of Civil Rights need to be about the business of ensuring that each individual who wants to go to college has an opportunity to go without regard to their race.

Mr. WEISS. On June 14, 1990, the Office of Management and Budget issued a policy statement on a bill to reauthorize programs under dedication of the Handicapped Act. This statement said the administration will work against, "Preferences for certain individuals, schools or organizations solely on the basis of their minority group status, which the Department of Justice advised is unconstitutional."

Is that still the administration's position?

Mr. WILLIAMS. I am not aware of the document nor am I aware if it is still in their possession?

Mr. WEISS. Dr. Sanders.

Dr. SANDERS. Not aware of the document, nor am I aware of the position.

Mr. WEISS. In August 1990, OMB informed the Department of Education that it opposed provisions of a Senate bill providing financial aid to most secretary schools. A note from OMB said:

> We believe the Department of Justice would find unconstitutional the requirement to give priority to institutions of higher education that are identifiable at least in part in ethnic and racial terms.
>
> We particularly object to singling out Hispanic serving institutions of higher education, whatever that undefined term may man, for special treatment. This would set a bad precedent Congress would be tempted to repeat in numerous other contexts.

Does that mean the administration opposes all attempts to assist minorities is your policy aimed only at Hispanics?

Dr. SANDERS. Again, Mr. Chairman, I don't know the document that you are quoting from. I don't know the context in which it was transmitted to the Department or what the eventual effect of the statement was.

I think Michael Williams has very, very eloquently stated in general what the Secretary stated to you earlier today, that we do need more individuals in rather than out.

Mr. WEISS. Mr. Williams, are you familiar with that memorandum?

Mr. WILLIAMS. Similar to Dr. Sanders, I am not familiar with the memorandum.

Mr. WEISS. In July, 1990, the Department of Education opposed the Women and Minorities in Mathematics and Sciences Act. The memorandum describing the Department's opposition stated, "The gender and race-specific elements of the programs raise constitutional concerns particularly in light of the lack of significant congressional findings regarding the underrepresentation of women and minorities in these fields."

Dr. Sanders, are you aware that at the same time the Department was opposing legislation to help women and minorities because it claims there was no evidence those groups have been underrepresented, the President's adviser was delivering testimony before Congress which concluded, "Woman and minorities have

been poorly represented in science and engineering, yet these groups make up a larger and larger fraction of young people today."

Dr. SANDERS. No, I was not aware of that fact.

Mr. WEISS. Do you see any inconsistencies within the administration's opposition to those bills and its support for other minority preference programs?

Dr. SANDERS. No, not without reading carefully the words and looking at the document and looking more carefully at what Dr. Bromley said. I don't know whether there are any inconsistencies or not.

Mr. WEISS. The Office of General Counsel for the Department finds inconsistencies in the Administration's position. A memorandum from the Department's Office of General Counsel stated, "There remains a tension between the Department of Justice's objections to various provisions and the administration support for historically black college and university programs."

Are you aware of that memorandum?

Dr. SANDERS. No, Mr. Chairman, I am not.

Mr. WEISS. Mr. Williams, are you?

Mr. WILLIAMS. I am not.

Mr. WEISS. In a report noting the President's opposition to the handicap bill, the Office of General Counsel wrote, "It would be helpful if the Department of Justice would explain in more detail why other programs which the President routinely requests appropriations are constitutionally acceptable."

Another memorandum stated, "The Department of Justice draft bill report focuses on the legal and constitutional issues concerning H.R. 515. Especially provisions for persons judicially underrepresented, such as women and minorities.

"We defer to their arguments, but one must assume the Department of Justice would have the same comments on some of ED's education existing programs and would oppose them."

Were you aware of this memorandum?

Dr. SANDERS. I am not certain without looking at it more carefully, Mr. Chairman. I may have seen that memorandum.

Mr. WEISS. This is in a memo dated February 23, 1990. It is headed, Department of Education comments on the public adjustor's draft bill report on H.R. 1013.

Mr. WILLIAMS. Mr. Chairman, I don't believe I have ever seen this before.

Mr. WEISS. Thank you.

Mr. Williams, are you familiar with it?

Mr. WILLIAMS. The memorandum predates my joining the Department, and I did not see it then nor do I have any personal knowledge of it now.

Mr. WEISS. Thank you.

One final question, Dr. Sanders, for clarification purposes, for clarification of the record.

Is it your testimony that at no time did you suggest to Dr. Kunkel your concern about the Middle States diversity standard prior to the second vote on that accreditation of Middle States?

Dr. SANDERS. Mr. Chairman, I do not believe that I expressed to him my concern. I may have expressed concerns about the Middle States and other institutions that were up for consideration.

I can't be absolutely certain that there were no discussions between Dr. Kunkel and myself.

I do not believe that I expressed any concerns about Middle States.

I certainly did not try to influence his opinion because I know that it would be impossible to do so should I even try.

Mr. WEISS. Would you agree that the discussion of any pending matter is, in fact, inappropriate and prohibited, between you and members of that committee ?

Dr. SANDERS. I would not agree that that is true. I do not think it was inappropriate for Dr. Kunkel to perhaps tell me what had happened during the course of the day when we saw one another socially, nor do I think it was inappropriate for him to call and ask basically procedural advice, could this be done, if he desired to do so.

Mr. WEISS. You are quite clear that you did not initiate any of those discussions? Is that your testimony?

Dr. SANDERS. I could have initiated conversations with Dr. Kunkel, yes, because—but my recollection is that I did not initiate any of those conversations, Mr. Chairman. I did talk to Dr. Kunkel, because we planned to get together a couple of times socially, in fact, to have dinner together later in that week after his business in town as completed. We typically do that when he is in town.

Mr. WEISS. I am asking you not about your social discussions, but about your discussions with him about the diversity standards.

Dr. SANDERS. Our social relationship is based on a professional relationship. Whenever we have dinner together, frequently the discussions are about substantive issues out of both of our experiences.

Mr. WEISS. So it is quite possible that at that dinner you had after the first vote on accrediting Middle States that you did discuss the diversity standards?

Dr. SANDERS. I doubt there was a substantive discussion because I only saw and had a conversation with Richard for about maybe 3, 5, 6 minutes during the course of that entire evening, so I doubt there was much substantively discussed.

Mr. WEISS. You have no clear recollection either way, is that right?

Dr. SANDERS. I have told you to the best of my ability my recollection of the discussions that evening.

Mr. WEISS. Well, I thank you all very much for your testimony. We will review the record.

I think that we will have questions to be submitted to the Secretary, and hopefully he will respond to those in relatively brief order. Depending on the nature of those responses, that is the responsiveness of them, we may simply accept hem for the record.

If not, we may, in fact, invite him to come back and clarify his responses in person.

With that, and our appreciation to each of you, we will excuse you at this time.

The testimony that we have heard today combined with the documents obtained by the subcommittee, demonstrate that the Secretary of Education does not have the authority to set standards for any accrediting agency. Only State and local governments have that authority.

The Secretary's intrusion into the accrediting will lead to unwarranted and unauthorized Federal control over education aside from the Department accreditation procedural and legal misadventures in this affair, I am concerned about the Department's continued assault on affirmative action.

Minority Americans still suffer from the vestiges of our tragic history of discrimination and segregation. Minorities still lag far behind in terms of access to education.

There will be no equal access to education without affirmative action, but the Bush administration seems more intent on using quota scare tactics for political gain than achieving equal access to education. Rather than easing the burdens of illegal segregation, the Department of Education wants to create more.

First, the Department attempted to ban minority preference scholarships. Now it is attempting to outlaw diversity standards.

The Department lacks authority to establish standards for accrediting agencies, but when the Assistant Secretary for Postsecondary Education attempted to tell the Secretary that, he was fired.

When the Office of General Counsel tried to warn the Secretary that the didn't have the authority to do it, it was ignored. When the Department's advisory committee approved recognition for the Middle States accrediting association, the Acting Secretary of Education apparently was in a position to lobby the committee to have the vote overturned.

These events lead me to the conclusion the debate about diversity has nothing to do with policy or procedure or even educational excellence. It has to do with racially divisive politics, the kind that scorned the infamous Willie Horton campaign in the last presidential election.

Unfortunately, these scare tactics seem to work in elections. We cannot allow such tactics to guide our Federal education policy.

The subcommittee stands adjourned subject to the call of the Chair.

[Whereupon, at 1:05 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

○

ISBN 0-16-038340-4

9 780160 383403 90000

53-841 0 - 92 (64)